16-663

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 154.

THE TOWNSHIP OF CHICKAMING, PLAINTIFF IN ERROR,

vs.

SAMUEL M. CARPENTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED NOVEMBER 28, 1879.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the circuit court of the United States for the western district of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Samuel M. Carpenter, plaintiff, and The Township of Chickaming, defendant, a manifest error hath happened, to the great damage of the said Township of Chickaming, defendant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the sixteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] HENRY M. HINSDILL,
Clerk of the Circuit Court of the United States
for the Sixth Circuit and Western District of Michigan.

Allowed by,

S. L. WITHEY,
Dist. Judge.

(Indorsed:) No. 1200. U. S. circuit court, west. dist. of Mich. Samuel M. Carpenter, def't in error, ads. Township of Chickaming, plaintiff in error. Filed August 27, 1879. H. M. Hinsdill, cl'k. Edward Bacon, attorney for plaintiff in error.

2 The United States of America to Samuel M. Carpenter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, A. D. 1879, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, in which writ The Township of Chikaming is plaintiff in error and you, the said Samuel M. Carpenter, are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

3 Witness the honorable S. L. Withey, district judge of the western district of Michigan, and holding there the circuit court of the

United States for said district, southern division, this 27th day of August, A. D. 1879.

S. L. WITHEY,
Dist. Judge.

WESTERN DISTRICT OF MICHIGAN, *ss:*

On this 27th day of August, A. D. 1879, personally appeared Edward Bacon, attorney of record for the within-named Township of Chikaming, before me, the subscriber, Henry M. Hinsdill, and makes oath that on said day, at the office of Hughes, O'Brien and Smiley, attorneys for the within-named Samuel M. Carpenter, at the city of Grand Rapids, in said district, he did personally deliver to their clerk, John Patton (who was in charge of said office, none of said firm being there), a true copy of the within and foregoing citation; at the same time this deponent showed to said John Patton the within citation, with the signature of the Hon. S. L. Withey.

EDWARD BACON.

Subscribed and sworn to before me this 27th day of August, A. D. 1879.

HENRY M. HINSDILL,
Clk U. S. Cir. Court.

(Indorsed:) No. 1200. The United States of America. In the circuit court of the United States for the sixth circuit and western district of Michigan, southern division. Samuel M. Carpenter vs. The Township of Chikaming. Citation to appear in the United States Supreme Court, where The Township of Chikaming is plaintiff in error vs. Samuel M. Carpenter, defendant in error. Filed August 27, 1879. H. M. Hinsdill, cl'k.

4 Know all men by these , that we, Albert L. Drew, John C. Miller, Amos Fisher, and Wm. A. Keith, as sureties, all of the county of Berrien and State of Michigan, are held and firmly bound unto Samuel M. Carpenter in the full and just sum of two hundred dollars, lawful money of the United States, to be paid to the said Samuel M. Carpenter, or his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 23rd day of August, A. D. 1879.

Whereas in a suit lately depending in the circuit court of the United States for the sixth circuit and western district of Michigan, between the said Samuel M. Carpenter as plaintiff and The Township of Chickaming, as defendant, judgment was rendered in favor of said plaintiff, Samuel M. Carpenter, and against the said defendant, The Township of Chickaming, for more than five thousand dollars, and the said defendant,

5 The Township of Chickaming, having obtained a writ of error, and filed the same, together with a copy thereof, in the office of the clerk of said court, to remove the record and proceedings in said suit unto the Supreme Court of the United States, and said defendant also having obtained and served a citation, directed to the said Samuel M. Carpenter, citing and admonishing him to appear at a Supreme Court to be holden at Washington on the second Monday of October next, A. D. 1879:

Now, therefore, the condition of this obligation is such that if The Township of Chickaming aforesaid shall prosecute its said writ of error to effect, and answer all damages and costs if it fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ALBERT L. DREW. [L. S.]
JOHN C. MILLER. [L. S.]
AMOS FISHER. [L. S.]
WM. A. KEITH. [L. S.]

Signed, sealed, and delivered in the presence of—

6 STATE OF MICHIGAN,
County of Berrin, ss:

Albert L. Drew, John C. Miller, Amos Fisher, and Wm. A. Keith, of said county, being each severally sworn, depose and say that each of them has in said county property liable to execution to an amount exceeding in value five hundred dollars over and above all of his debts and liabilities.

Subscribed and sworn to before me this 23rd day of August, A. D. 1879.

BURWELL HINCHMAN,
Notary Public in & for Berrin County.

Approved,

S. L. WITHEY,
Dist. Judge.

(Indorsed:) No. 1200. United States of America. In the circuit court of the United States for the sixth circuit and western district of the State of Michigan, southern division. Samuel M. Carpenter vs. The Township of Chickaming. Bond on writ of error. Filed August 27, 1879. H. M. Hinsdill, cl'k. Edward Bacon, defendant's att'y.

7 *Summons.*

Circuit court of the United States of America for the sixth circuit and western district of Michigan.

The President of the United States of America to the marshal of the western district of Michigan, greeting:

You are hereby commanded that you summon The Township of Chikaming, which is a citizen of the State of Michigan, if it shall be found in your district, to be and appear in the circuit court of the United States of America for the sixth circuit and western district of Michigan, to be held in the city of Grand Rapids, in the said district, before the judges thereof, on the sixth day of November, A. D. 1877, then and there to answer unto Samuel M. Carpenter, of Cleveland, and who is a citizen of the State of Ohio, in a plea of trespass on the case upon promises, to the damage of the said plaintiff of ten thousand dollars; and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court this

twenty-sixth day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] CHESTER B. HINSDILL, *Clerk*,
By A. B. CARRIER, *Deputy*.

8 (Indorsed:) No. . Circuit court of the United States for the *for the* sixth circuit and western district of Michigan. Samuel M. Carpenter vs. The Township of Chickaming. Summons. Returned and filed Nov. 2, '77. C. B. Hinsdill, clerk. Hughes, O'Brien & Smiley, plaintiff's attorney.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the thirty-first day of October, A. D. 1877, I served the within writ on The Township of Chickaming, the defendant within named, at Chickaming, in said district, by delivering to Albert L. Drew, the supervisor of said township, a true copy of the within writ.

JOHN PARKER,
U. S. Marshal,
By CUSHAN BURR,
Deputy.

Service, $2.00; cop., $ .50; 112 miles travel, $6.72—fees, $9.22.

We hereby acknowledge ourselves security for all costs that may be adjudged against the plaintiff in the within cause.

Dated October 26th, 1877.

HUGHES, O'BRIEN & SMILEY.

9 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit and western district of Michigan.

SAMUEL CARPENTER
vs.
THE TOWNSHIP OF CHICKAMING, IN THE County of Berrien.

To the clerk of said court:

SIR: Whereas I am retained as attorney for said defendant in this suit, please enter the appearance of said defendant in this suit by me as its attorney.

Dated November 5th, A. D. 1877.

EDWARD BACON,
Defendant's Attorney.

(Indorsed:) United States of America. In the circuit court of the United States for the sixth circuit and western district of Michigan. Samuel Carpenter vs. The Township of Chickaming. Precipe to enter appearance of defendant. Filed Nov. 6, '77. C. B. Hinsdill, clerk. Edward Bacon, defendant's attorney.

10 October term, A. D. 1877. Nov. 6th, 1877.

SAMUEL M. CARPENTER)
vs.
TOWNSHIP OF CHIKAMING.)

In this cause, on motion of Edward Bacon, attorney for defendant, ordered, that the appearance of said defendant be, and the same hereby is, entered in this cause.

EDWARD BACON,
Att'y for Plaintiff.

11 The circuit court of the United States for the western district of Michigan.

UNITED STATES OF AMERICA,
Western District of Michigan, ss:

Samuel M. Carpenter, of Cleveland, in the State of Ohio, and a citizen of said State, plaintiff herein, by Hughes, O'Brien & Smiley, his attorneys, filing this declaration, complains of the Township of Chickaming, in the county of Berien and State of Michigan, which has heretofore been summoned herein, a corporation organized and existing under and by virtue of the laws of the State of Michigan, and located within *within* the said western district of Michigan, defendant in this action, of a plea of trespass on the case upon promises.

For that whereas the said defendant—acting under the authority in that behalf given it by an act of the legislature of the State of Michigan, entitled "An act to enable any township, city, or village to pledge its aid, by loan or donation, to any railroad company now chartered or organized, or that may be hereafter organized under and by virtue of the laws of the State of Michigan in the construction of its road," approved March 22, 1869, and the vote of the electors of said township at a meeting held for that
12 purpose, whereby the credit of said township was pledged to aid in the construction of a railroad running through said township of Chickaming—heretofore, to wit, on the first day of June, A. D. 1869, to wit, at said Chickaming Township, Berien County, in said western district of Michigan, made *to* certain bond or obligation, not under seal, numbered 3, and bearing date the 1st day of June, A. D. 1869, and then and there duly delivered the same to the State treasurer of Michigan, and the same was by him afterwards duly delivered to the Chicago and Michigan Lake Shore Railroad Company, a corporation then and there duly organized and existing under and by virtue of the laws of the State of Michigan; and therein and thereby the said defendant promised to pay the said Chicago and Michigan Lake Shore Railroad Company, or to the bearer of said bond, at the county treasurer's office, on the first Monday in February, A. D. 1872, the sum of one thousand dollars, and to pay interest thereon from the 18th day of February, A. D. 1870, the time of the delivery of said bond as aforesaid, at the rate of ten per centum per annum, on the first Monday in February in each and every year thereafter until the principal sum of said bond should be paid, upon pre-
13 sentation and delivery at said county treasurer's office of the inter-

est warrants or coupons annexed to said bond and delivered therewith; which said interest warrants were and are in the form of an order in favor of the bearer thereof, drawn by the supervisor and township clerk of said defendant corporation on the treasurer of said corporation. And the said Chicago & Michigan Lake Shore Railroad Company, afterward, to wit, on the day and year and at the place first aforesaid, duly delivered the said bond, together with the interest warrants or coupons thereto annexed, to the said plaintiff, who thereby then and there became and was and still is the lawful bearer thereof, and entitled to demand and recover payment of the said sums of money in the said bond and interest warrants specified; whereof the said defendant, afterwards, to wit, on the day and year and at the place last aforesaid, had notice, and by reason thereof became liable to pay the said plaintiff the said sum of money; and being so liable, it, the said defendant, in consideration thereof, afterwards, to wit, on the day and year and at the place aforesaid, undertook and promised the said plaintiff to pay him the said sums of money in said bond and interest warrants mentioned, according to the tenor and
14 effect of said bond and interest-warrants. The plaintiff avers that the principal sum in the said bond specified is due and unpaid.
15 And also for that whereas the said defendant, acting under the authority in that behalf given to it by the aforesaid act of the legislature of the State of Michigan, and the vote of the electors of said township at said meeting, held as in the first count of this declaration mentioned heretofore, to wit, on the first day of June, A. D. 1869, to wit, at Chickaming Township, in the said county of Berrien and State and western district of Michigan, by its certain other bond and writing obligatory numbered 4, and made and subscribed and executed in the same manner and by the same supervisor and township clerk of Chickaming Township, and under the same authority, as the said writing obligatory in the first count of the declaration mentioned, and with like coupons thereto annexed as are annexed to the writing obligatory in the first count of this declaration mentioned, and to the court now here shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year last aforesaid, acknowledged itself to owe and promised to pay the Chicago and Michigan Lake Shore Railroad Company, a corporation then and there duly organized and existing under and by virtue of the laws of the State of Michigan, or to the bearer of said bond or writing obligatory, the sum of other one thousand dollars, lawful money of the United States of America, on the first Monday of February, in the year of our Lord one thousand eight hundred and seventy-three, at the office of the treasurer of the said county of Berrien, with interest at the rate of ten per centum from the 18th day of February, 1870, payable annually, on the first Monday of February in each year, on the surrender of the coupons to said last-mentioned writing obligatory annexed, as said last-mentioned coupons severally became due, as by the said writing obligatory, reference being thereunto had, will more fully and at large appear, and said last-mentioned writing obligatory, with the coupons thereunto annexed, was thereafter, to wit, on the day of , at, to wit, in said district, duly delivered under and according to the aforesaid act of the legislature of Michigan, approved March 22, 1869, to the State treasurer of Michigan, and the same was by him duly delivered to the said Chicago and Michigan Lake Shore Railroad Company,

and the said Chicago and Michigan Lake Shore Railroad Company, afterwards, to wit, on the day and year and at the place last aforesaid, duly delivered the said last-mentioned writing obligatory, with the coupons thereunto annexed, to the said plaintiff, who thereby then and there became and was and still is the lawful owner and bearer thereof and entitled to demand recover payment of the said sums of money in the said writing obligatory numbered 4, and the coupons thereto annexed specified, whereof the said defendant afterwards, to wit, on the day and year and at the place last aforesaid, had notice, and by reason thereof became liable to pay the said sums of money in said writing obligatory numbered 4 and the coupons thereto annexed specified to the said plaintiff; and being so liable, it, the said defendant, in consideration thereof, afterwards, to wit, at the time and place aforesaid, undertook and promised the said plaintiff to pay him the said sums of money in said bond and interest warrants mentioned, according to the tenor and effect of said bond and interest warrants.

16 And also for that whereas the said defendant, acting under the authority in that behalf given to it by the aforesaid act of the legislature of the State of Michigan, and the vote of the electors of said township at said meeting held as in the first count of this declaration mentioned, heretofore, to wit, on the first day of June, A. D. 1869, to wit, at Chickaming Township, in the said county of Berrien and State and western district of Michigan, by its certain other bond and writing obligatory numbered 6, and made and subscribed and executed in the same manner and by the same supervisor and township of said township clerk of Chickaming, and under the same authority, as the said writing obligatory in the first count of the declaration mentioned, and with like coupons thereto annexed as are annexed to the writing obligatory in the first count of this declaration mentioned, and to the court now here shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year last aforesaid, acknowledged itself to owe and promised to pay the Chicago and Michigan Lake Shore Railroad Company, a corporation then and there duly organized and existing under and by virtue of the laws of the State of Michigan, or to the bearer of said bond or writing obligatory, the sum of other one thousand dollars, lawful money of the United States of America, on the first Monday of February, in the year of our Lord one thousand eight hundred and seventy-five, at the office of the treasurer of the said county of Berrien, with interest at the rate of ten per centum from the 18th day of February, 1870, payable annually, on the first Monday of February in each year, on the surrender of the coupons to said last-mentioned writing obligatory annexed, as said last-mentioned coupons severally became due, as by the said writing obligatory, reference being thereunto had, will more fully and at large appear, and said last-mentioned writing obligatory with the coupons thereunto annexed was thereafter, to wit, on the day of , at, to wit, in said district, duly delivered under and according to the aforesaid act of the legislature of Michigan, approved March 22, 1869, to the State treasurer of Michigan, and the same was by him duly delivered to *to* the said Chicago and Michigan Lake Shore Railroad Company, and the said Chicago and Michigan Lake Shore Railroad Company, afterwards, to wit, on the day and year and at the place last aforesaid, duly delivered the said last-mentioned writing obligatory, with the coupons

thereunto annexed, to the said plaintiff, who thereby then and there became and was, and still is, the lawful owner and bearer thereof, and entitled to demand recover payment of the said sums of money in the said writing obligatory numbered 6 and the coupons thereto annexed specified, whereof the said defendant afterwards, to wit, on the day and year and at the place last aforesaid, had notice, and by reason thereof became liable to pay the said sums of money in said writing obligatory numbered 6, and the coupons thereto annexed, specified to the said plaintiff; and being so liable, it, the said defendant, in consideration thereof, afterwards, to wit, at the time and place aforesaid, undertook and promised the said plaintiff to pay him the said sums of money in said bond and interest warrants mentioned, according to the tenor and effect of said bond and interest warrants. And plaintiff avers that of the interest warrants or coupons annexed to said bond as aforesaid the coupon for the installments of interest on said bond becoming due and payable on the first Monday of February, 1875, being for the sum of one hundred dollars, is due and unpaid.

17 And also for that whereas the said defendant, acting under the authority in that behalf given to it by the aforesaid act of the legislature of the State of Michigan, and the vote of the electors of said township at said meeting, held as in the first count of this declaration mentioned, heretofore, to wit, on the first day of June, A. D, 1869, to wit, at Chickamining Township, in the said county of Berrien and State and western district of Michigan, by its certain other bond and writing obligatory numbered 7, and made and subscribed and executed in the same manner and by the same supervisor and township clerk of said township, and under the same authority, as the said writing obligatory in the first count of the declaration mentioned, and with like coupons thereto annexed as are annexed to the writing obligatory in the first count of this declaration mentioned, and to the court now here shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year last aforesaid, acknowledged itself to owe and promised to pay the Chicago and Michigan Lake Shore Railroad Company, a corporation then and there duly organized and existing under and by virtue of the laws of the State of Michigan, or to the bearer of said bond or writing obligatory, the sum of other one thousand dollars, lawful money of the United States of America, on the first Monday of February, in the year of our Lord one thousand eight hundred and seventy-six, at the office of the treasurer of the said county of Berrien, with interest at the rate of ten per centum from the 18th day of February, 1870, payable annually, on the first Monday of February in each year, on the surrender of the coupons to said last-mentioned writing obligatory annexed as said last-mentioned coupons severally became due, as by the said writing obligatory, reference being thereunto had, will more fully and at large appear, and said last-mentioned writing obligatory, with the coupons thereunto annexed, was thereafter, to wit, on the day of , at, to wit, in said district, duly delivered under and according to the aforesaid act of the legislature of Michigan, approved March 22, 1869, to the State treasurer of Michigan, and the same was duly delivered by him to the said Chicago and Michigan Lake Shore Railroad Company, and the said Chicago and Michigan Lake Shore Railroad Company afterwards, to wit, on the day and year and at the place last aforesaid, duly delivered the said last-mentioned writing obligatory, with the coupons thereunto annexed,

to the said plaintiff, who thereby then and there became and was, and still is, the lawful owner and bearer thereof, and entitled to demand recover payment of the said sums of money in the said writing obligatory numbered 7, and the coupons thereto annexed, specified, whereof the said defendant afterwards, to wit, on the day and year and at the place last aforesaid, had notice, and by reason thereof became liable to pay the said sums of money in said writing obligatory numbered 7, and the coupons thereto annexed, specified to the said plaintiff; and being so liable *to* the said defendant, in consideration thereof, afterwards, to wit, at the time and place aforesaid, undertook and promised the said plaintiff to pay him the said sums of money in said bond and interest warrants. And plaintiff avers that of the interest warrants or coupons annexed to said bond as aforesaid, the two for the installments of interest on said bond becoming due and payable on the first Mondays of February, 1875 and 1876, respectively, being for the sum of one hundred dollars each, are due and unpaid.

18 And for that also the said defendant, on the first day of April, A. D. 1874, to wit, at the said city of Grand Rapids, in said western district of Michigan, was indebted to the plaintiff in the sum of thirty thousand dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendant at its request.

And, in like sum, for the price and value of work then and there done, and material for the same provided by the plaintiff for the defendant at its request.

And, in a like sum, for money then and there lent by the plaintiff to the defendant at its request.

And, in a like sum, for money then and there received by the defendant for the use of the plaintiff.

And, in a like sum, for money then and there found to be due from the defendant to the plaintiff, on an account stated between them.

And thereupon the said defendant afterwards, to wit, on the day and year aforesaid, in consideration of the premises respectively, then and there promised the plaintiff to pay him the said several last-mentioned sums of money on request.

Yet the said defendant has disregarded its said promises, and has not (although often requested so to do) paid any of the said sums of money, or any part thereof, to the plaintiff's damage of thirty thousand dollars, and therefore he brings suit, &c.

HUGHES, O'BRIEN & SMILEY,
Attorneys for Pl'ff.

Take notice that the within is a true copy of a declaration filed in said cause.

November 27, 1877.

Yours, &c.,

HUGHES, O'BRIEN & SMILEY,
Att'ys for Pl'ff.

To EDWARD BACON, Esq'r,
Att'y for Def't.

(Indorsed:) Circuit court of the United States for the western district of Michigan. Samuel M. Carpenter, plaintiff, vs. The Township of

Chickaming, defendant. Narr. Hughes, O'Brien & Smiley, att'ys for pl'ff. Filed Nov. 26, '77. C. B. Hinsdill, clerk.

19 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit and western district of Michigan.

SAMUEL CARPENTER
vs.
THE TOWNSHIP OF CHIKAMING.

Now comes the said defendant, the Township of Chikaming, by Edward Bacon, its attorney, and demands a trial of the matters set forth in the said plaintiff's declaration.

EDWARD BACON,
Defendant's Attorney.

To the above named plaintiff and to Hughes, O'Brien and Smiley, his attorneys:

Please take notice that on the trial of this cause the said defendant, under its said plea, will give in evidence and insist that none of the bonds or coupons mentioned in said declaration were ever signed by any person who was, at the time of signing them by him, township clerk of said Township of Chikaming, either de jure or de facto. Also, that none of said bonds or said coupons were signed by O. C. Gillette until after a long time,
20 to wit, eight months, after June 1st, A. D. 1869. Also, that none of said bonds or coupons were issued or passed out of possession of said defendant, or of its proper officer or officers, until after a long time, to wit, eight months, after June 1st, 1869. Also, that none of said bonds or coupons were legally issued or passed legally out of the possession of said defendant, or of its proper officer or officers. Also, that Alvin G. Barnett was, at the township election in April, 1869, duly elected township clerk of said township, and did duly qualify and enter upon the duties of his office as such clerk, and continued in occupation and possession of said office, and was such clerk from April, 1869, till October, 1869, and that he refused to sign any of said bonds or coupons. Also, that O. C. Gillette, whose name appears on said bonds, was not, when he signed the same, an officer of said township. Also, that none of said bonds or coupons ever came legally or by proper authority to the possession of any State treasurer of Michigan, or did legally or by any proper authority pass out of the possession of any State treasurer of Michigan. Also, that no railroad company in aid of which any of said bonds or coupons were voted, or which was in existence at the time of any
21 vote mentioned in any of said bonds, did ever obtain any of said bonds, or authorize the delivery of any of said bonds or coupons by any State treasurer.

Also, that no State treasurer ever delivered any of said bonds or coupons, or suffered the same to go into circulation prior to the 18th day of February, A. D. 1870. Also, that every vote of aid mentioned in said declaration or in any of said bonds, was a vote of aid by donation only, and took place in May, A. D. 1869. Also, that the Chicago and Michigan Lake Shore Railroad Company, named in said bonds, and in whose aid said bonds

appeared to have been voted, consolidated with another railroad company whose line extended into parts of the State remote from every part of the said Chicago and Michigan Lake Shore Railroad Company, and that by said consolidation a new corporation was formed merging in itself the two consolidating corporations, both of which ceased to exist and became extinguished, and said new corporation took the name of said Chicago and Michigan Lake Shore Railroad Company, and duly filed in said month of July its agreement of consolidation, showing the manner and nature
22 thereof, in the office of the secretary of state of Michigan, where the same have ever since remained of record.

Also, that the first Chicago and Michigan Lake Shore Railroad Company aforesaid never received or became entitled to receive any of said bonds or coupons.

Also, that said first Chicago and Michigan Lake Shore Railroad Company never had any legal or equitable right of, in, or to any of said bonds or coupons.

Also, that the Chicago and Michigan Lake Shore Railroad Company named in every certificate or statement of H. D. Bartholomew, deputy State treasurer, appearing indorsed on every one of said bonds, was not the same company named in any of said bonds, or for which any aid was voted in said township, and was not in existence in May or June, 1869, and was never entitled to any of said bonds or coupons, and did in February, 1869, at said county of Berrien, and at Lansing, in said State, by falsely and fraudulently pretending to have title and right to said bonds and coupons by some consolidation or otherwise, and to be the true corporation entitled thereto, wrongfully and fraudulently obtain possession thereof without any right whatever and without any due authority from any source, by
23 any consolidation or otherwise.

Also, that whoever obtained any of said bonds or coupons from Oliver L. Newkirk and O. C. Gillette, or from either of them, or from any State treasurer, or from any deputy State treasurer, or obtained them by fraud and by false pretences, and that if any of said bonds or coupons have been put into circulation it was by fraud and wrong, and without any authority.

Also, that the said plaintiff was never a bona fide purchaser of any of said bonds or coupons, and that at the utmost the said plaintiff only has in or to said bonds and coupons the pretended right to hold them as collateral security for some debt not of the first Chicago and Michigan Lake Shore Railroad Company.

Also, that said bonds and coupons were signed by O. C. Gillette at the office of Alexander H. Morrison, at St. Joseph, in said county, in February, A. D. 1870, and were then and there handed over by Oliver L. Newkirk to said Morrison, on the agreement of said Morrison then and there made to procure the redelivery of four of said bonds with all coupons thereto attached, to wit, bonds Nos. 1, 2, 3, and 12. Also, that said Alexander H. Morrison, in obtaining the said bonds and coupons, and in all transactions from July, 1869, to July, 1870, relating to
24 any bonds and coupons mentioned in said declaration, was acting for the new corporation formed by the consolidation aforesaid and claimed to be vice-president thereof, and was not acting for the railroad company named in said bonds. Also, that said new corporation never

had any right or title to any of said bonds or coupons, or to have delivery or to make any transfer thereof.

EDWARD BACON,
Attorney for Defendant.

STATE OF MICHIGAN,
County of Berrien, ss:

WESTERN DISTRICT OF MICHIGAN, *ss:*

Albert L. Drew, of the township of Chikaming, in said county, being first duly sworn, deposes and says that he has examined the plea and notice hereto annexed and a copy of the declaration referred to in said plea, and that throughout the sixteen years last past he has resided in the township of Chikaming aforesaid, and from the beginning of the year 1869 hitherto has been a justice of the peace in said township, and
25 that this deponent was well informed and has knowledge concerning the circumstances of the vote and the circumstances of the signing of the bonds and coupons mentioned in said declaration, and concerning the circumstances under which said bonds and coupons were obtained from Oliver L. Newkirk, supervisor of said township, by Alexander H. Morrison, of St. Joseph, in said county, in February, A. D. 1870; and this deponent further says that he is now the supervisor of said township.

And this deponent makes this affidavit on behalf of said township, defendant in the aforesaid suit, wherein are the declaration and plea aforesaid. And this deponent further says that according to the best of his knowledge and belief all the following allegations are true:

Every vote for aid to any railroad company mentioned in said declaration was a vote for aid by donation only; that at the township election held in said township in April, A. D. 1869, Oliver L. Newkirk was elected supervisor of said township, and Alvin G. Barnett was elected township clerk of said township, both of which officers duly qualified, entered upon the duties of their respective offices aforesaid, and continued to dis-
26 charge such duties throughout the month of May and the summer of 1869; that said Oliver L. Newkirk signed said bonds and coupons at about the time they bear date; that said Alvin G. Barnett, being town clerk as aforesaid, signed none of them, and refused to sign any of them; also, that all of said bonds and coupons were held in possession of said Oliver L. Newkirk, as supervisor of said township, for about eight months after June 1st, A. D. 1869; also, that in July, 1869, the railroad company mentioned in said bonds did consolidate itself with another railroad company whose line extended into parts of this State remote from every part of the line of the first-mentioned company, and that by such consolidation a new corporation was formed which assumed the same name as that of the railroad company named in said bonds, but was in truth a very different railroad company; that by such consolidation the railroad company named in said bonds became merged and extinguished without ever having received, and without ever having become entitled to receive, any of said bonds or coupons, and never since such consolidation has approved or acted or done any acts of user as a corporation; and that said first corporation never
27 had any legal or equitable right of, in, or to any of, said bonds or coupons. Also, that the Chicago and Michigan Lake Shore Railroad

Company, named in every certificate and statement of H. D. Bartholomew, deputy State treasurer, appearing endorsed on every bond mentioned in said declaration, was not the same railroad company named in any of said bonds, and was not in existence at any time in May or June, A. D. 1869; and that if said consolidation was illegal or void, said last-mentioned corporation never had any right to receive any of said bonds or coupons, or to receive or to make any delivery or transfer thereof.

And this deponent further says that by reason of the premises and according to his best knowledge and belief, none of said bonds or coupons were ever legally executed by any township clerk; and further, that, according to his best knowledge and belief, none of said bonds or coupons mentioned in said declaration were ever legally delivered, and therefore none of said bonds or coupons were ever legally executed.

ALBERT L. DREW.

Subscribed and sworn to before me this 12th day of December, A. D. 1877.

[L. S.] JOSEPH S. BACON,
Notary Public, Berrien County, Michigan.

28 (Indorsed:) United States of America. In the c't c't of the U. S. for the 5th circuit and western dist. of Michigan. Samuel Carpenter vs. The Township of Chikaming. Filed December 17th, '77. Chester B. Hinsdill, clerk.

To HUGHES, O'BRIEN & SMILEY,
Att'ys for said Plaintiff:

GENTLEMEN: Please take notice that the within is a true copy of the defendant's plea and notice, and of the affidavit thereto attached, all on file in this case in the office of the clerk of this court, at the city of Grand Rapids, in said district.

EDWARD BACON,
Attorney for Defendant.

29 UNITED STATES OF AMERICA:

The circuit court of the United States for the western district district of Michigan.

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHIKAMING.

SIR: You will please take notice that the annexed is a true copy and description of the bonds and coupons declared upon in said case, and that the same constitutes a bill of particulars of the plaintiff's demand and for the recovery of which this action is brought.

Dated November 30th, 1877.

Yours, &c.,

HUGHES, O'BRIEN & SMILEY,
Plaintiff's Attorneys.

To EDWARD BACON, Esq.,
Defendant's Attorney.

30 JUNE 1ST, 1869.

UNITED STATES OF AMERICA. STATE OF MICHIGAN.

No. 3.] COUNTY OF BERRIEN, TOWNSHIP OF CHICKAMING. [$1,000.

Authorized by a vote of the people of the Township of Chickaming.

Know all men by these presents that the Township of Chickaming hereby acknowledges to owe and promises to pay to the Chicago and Michigan Lake Shore Railroad Company, or bearer, one thousand dollars, lawful money of the United States of America, on the first Monday of February, in the year of our Lord one thousand eight hundred and seventy-two, at the office of the treasurer of the county of Berrien, with interest at the rate of ten per centum per annum, payable annually, on the first Monday of February in each year on the surrender of the annexed coupons as they severally become due.

This bond is executed and issued under the provisions of and in conformity to an act of the legislature of the State of Michigan, entitled "An act to enable any township, city, or village to pledge its aid, by loan or donation, to any railroad company now chartered or organized, or that may be hereafter organized under and by virtue of the laws of the State of Michigan, in the construction of its road," approved March 22, 1869.

(On margin:) One thousand dollars.

[50 ct. inter. rev. stamp. O. L. N. June 1st, 1869. 50 ct. inter. rev. stamp.]

In testimony whereof the supervisor of said township and the
31 township clerk thereof have signed their names hereto, as required by the act aforesaid, and dated the bond as authorized by the vote of the people.

OLIVER L. NEWKIRK,
Supervisor of Chikaming Township.

O. C. GILLETTE, *Township Clerk.*

On the back of which bond appears the following endorsement:

This bond was delivered by me to the Chicago and Michigan Lake Shore Railroad Company, under the provisions of act No. 45, approved March 22, 1869, the eighteenth day of February, 1870, and will bear interest from that date.

H. D. BARTHOLOMEW,
Dep. State Treasurer.

Upon the back of said bond also appears the said act of the legislature of Michigan referred to in said bond, and appended thereto the following certificate:

This is to certify that the township herein named has not issued bonds under the above act to the full amount allowed by said act, and that the said law in every respect was observed by both the people and the authorities of the said township in voting the aid to the within named railroad company, upon which vote this bond is issued under act aforesaid.

OLIVER L. NEWKIRK,
Supervisor Township of Chikaming.

O. C. GILLETTE,
Clerk Township of Chikaming.

32 Also three other bonds similar to the above, except that they are numbered, respectively, 4, 6, and 7.

Attached to said bond number 7 are two coupons, in the words and figures following, to wit:

$100.] [No. 7.

The Township of Chikaming will pay to the bearer, at the office of the treasurer of the county of Berrien, on the first Monday of February, 1875, one hundred dollars, interest due on their bond.

OLIVER L. NEWKIRK,
Supervisor of Township.

O. C. GILLETTE, *Township Clerk.*

The other said coupon is similar to above in all respects, except that it is payable on the first Monday in February, 1876.

Attached to said bond numbered 6 is one coupon similar to the one above set forth, except that it is numbered 6.

(Indorsed:) U. S. circuit court, west. dist. Mich. Samuel M. Carpenter vs. Township of Chikaming. Copies of bonds and bill of particulars. Received and filed November 8, 1878. Henry M. Hinsdill, clerk circuit court. Hughes, O'Brien & Smiley, pl'ff's att'ys.

33 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit and western district of Michigan, southern division.

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHI'KAMING.

Now comes said defendant, by Edward Bacon, its attorney, and in this cause requests the court now here to charge the jury as follows.

EDWARD BACON,
Defendant's Att'y.

1. In this action the plaintiff cannot recover on any of the bonds mentioned in the declaration.

2. The plaintiff cannot in this action recover on any written contract of the defendant mentioned in the declaration.

3. In this action the rights of the plaintiff to any bond mentioned in the declaration are no better than those of an assignee.

4. The railroad company mentioned in the declaration could not in this court recover on any bond or coupon mentioned in the declaration, and therefore the plaintiff cannot in this court recover on any bond or coupon mentioned in the declaration.

34 5. The plaintiff cannot in this action recover on any bond or coupon mentioned in the declaration, unless such bonds or coupons were legally signed by the township clerk of Chi'kaming Township.

6. The plaintiff cannot in this action recover on any bond or coupon not legally signed by any town clerk.

7. In this action under the pleadings the burthen of proof is on the plaintiff to show that O. C. Gillette was town clerk of Chi'kaming Township.

8. The burthen of proof is on the plaintiff to show the legal execution of every bond and coupon which he has offered in evidence.

9. Under the evidence in this case no bond or coupon mentioned in the declaration became the contract of the defendant prior to being signed by O. C. Gillette.

10. Under the evidence in this case none of the bonds and coupons mentioned in the declaration became the contract of the defendant prior to being signed by O. C. Gillette.

35 11. Under the evidence in this case the bond and coupons offered in evidence were not issued until after they signed by O. C. Gillette

12. Any officer of the township of Chickaming who held in his possession the bonds or coupons mentioned in the declaration prior to the time that they were signed by O. C. Gillette was so holding them in his possession as an agent of said township.

13. The evidence shows, without conflict, that no bond or coupon mentioned in the declaration was signed by O. C. Gillette until after the first day of January, A. D. 1870.

14. No bond mentioned in the declaration is a bill of exchange or promissory note.

15. The governor's certificate, offered in evidence, was not sufficient to authorize the delivery of the bonds to the railroad company to which the bonds were delivered.

16. Under the evidence in this case the governor's certificate, offered in evidence, was no authority for the delivery of any bonds or coupons to any railroad company other than the company in whose aid the bonds offered in evidence in this case were voted.

36 17. The burthen of proof is on the plaintiff in this case to show that he is a bona fide purchaser of bonds and that he paid for the same a consideration.

Dated Nov. 8, 1878.

EDWARD BACON,
Def'ts Att'y.

(Indorsed:) United States of America. In the circuit court of the United States for the sixth circuit and western district of Michigan, southern division. Samuel M. Carpenter vs. The Township of Chi'kaming. Defendant's requests for instructions to the jury. Received and filed November 8, 1878. Henry M. Hinsdill, clerk. Edward Bacon, defendant's att'y.

37 THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 8' day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and third.

Present, the honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHICKAMING.

This cause having been called for trial, the following jury was called and sworn, to wit: Ralph Pratt, H. D. Francisco, Oliver J. Watkins, T. H. Brooks, Charles N. Barnum, Oscar B. Barber, Aaron Hill, William J. Canfield, John R. Fletcher, George H. Seely, Charles J. Hays, Henry Eames, who sat together in the jury-box and heard the evidence this day adduced, and after listening to the arguments of counsel and charge of the court, without leaving their seats, say, upon their oaths, that the said defendant did undertake and promise in manner and form as the plaintiff has alleged in his declaration, and assess the damages of the plaintiff at the sum of six thousand two hundred and seventy-one dollars and seventy-five cents over and above his costs and charges.

38 *Orders.—U. S. Court.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 8 day of November, in the year of our Lord one thousand eight hundred and seventy eight, and of the Independence of the United States of America the one hundred and third.

Present, the honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHICKAMING.

In this cause, on application, ordered that defendant have sixty days in which to prepare and file bill of exceptions, with stay of proceedings in the meantime, except as to taxation of costs.

(Indorsed:) No. . United States court, western district of Michigan, southern division. Order.

39 *Orders.—U. S. Court.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 2' day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and third.

Present, the honorable Solomon L. Withey, district judge.

1816——2

Among the proceedings then and there had were the following, to wit:

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHIKAMING.

The jury by whom the issue joined in this cause was tried having rendered a verdict therein in favor of the plaintiff and against the defendant, and having assessed the damages of the said plaintiff on occasion of the premises at the sum of six thousand two hundred and seventy-one & $\frac{75}{100}$ dollars, ($6,271.75) over and above his costs and charges by him about his suit in that behalf expended: Therefore, it is considered that the said plaintiff do recover against the said defendant his damages by the jurors aforesaid, in form aforesaid, assessed and the interest thereon from the rendition of the said verdict, amounting to the sum of forty-one & $\frac{80}{100}$ dollars, ($41.80), which said judgment and interest, amounting to the sum of six thousand three hundred and thirteen and $\frac{55}{100}$ dollars ($6,313.55), together with his costs and charges to be taxed, and that he have execution therefor.

40 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit and western district of Michigan, southern division.

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHICKAMING.

At a session of said court, held at the United States court-room in the city of Grand Rapids, in said district, on the eighth day of November, A. D. 1878, before the honorable Solomon L. Withey, presiding judge.

The issue joined between the parties in this cause came on to be tried by a jury of said district for that purpose duly empanelled, good and lawful men of said district, at which day came there as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid empanelled to try the said issue also came, and then and there were duly chosen and sworn to try the issue aforesaid between the parties aforesaid.

And upon the trial of the issue aforesaid the said counsel for the
41 plaintiff produced and offered in evidence the bonds and coupons mentioned in the plaintiff's bill of particulars, which is hereinafter set forth, and contains a copy of one of said bonds and one of said coupons, each purporting to be dated June first, 1869, and signed as follows: "Oliver L. Newkirk, supervisor of Chikaming Township," "O. C. Gillette, township clerk;" but to the reading in evidence of said bonds and coupons, and to the reading in evidence of each of them, the said counsel for the defendant objected for reasons as follows:

That no proof was offered of the genuineness of any signature. That no proof was offered of any official character. That no proof was offered of the genuineness of the signature of O. C. Gillette. That no proof was offered that O. C. Gillette was ever town clerk of Chikaming. That no

execution of any bond or coupon according to law has been proved. And said counsel for the defendant then and there referred to the affidavit annexed to the defendant's plea on file in this suit; and on behalf of the defendant its counsel said to the court: I admit that O. C. Gillett signed the bonds and coupons, but I deny that he ever was town clerk or acting town clerk or had any authority to sign them or any of them. I admit that Oliver L. Newkirk was supervisor of the township of Chikaming and signed the bonds and coupons on or about the day of their date.

But the said judge did then and there declare and deliver his opinion that the said objections so taken by the counsel for the defendant as aforesaid ought not to be allowed, but that the said bonds and coupons
42 ought to be admitted in evidence and did accordingly decide that the same should be read in evidence on the part of said plaintiff, and the said bonds and coupons were thereupon read in evidence on the part of said plaintiff. But to the said opinion and decision of said judge the said counsel for the defendant did then and there on behalf of said defendant duly except.

And the said counsel for the plaintiff, further to maintain and prove the said issue on his part, produced and read in evidence a duly certified copy from a book of records belonging in the office of the State treasurer of the State of Michigan, known as the "register of railroad bonds," purporting that each of the bonds and coupons aforesaid was dated June 1st, 1869, and was received by the State treasurer February, 18th, 1870, and on the same day surrendered to A. H. Morrison, president of the Chicago and Michigan Lake Shore Railroad Company. A copy of the writing so offered in evidence is as follows:

43 . The following is a descriptive list of securities issued and transferred to the State treasurer of Michigan, executed by Oliver L. Newkirk, supervisor, and O. C. Gillette, township clerk, in trust for and by the township of Chikaming, Berrien County, to the benefit of the Chicago and Michigan Lake Shore Railroad Company, in pursuance of an act entitled "An act to enable any township, city, or village to pledge its aid by loan or donation to any railroad company now chartered or organized, or that may hereafter be organized, under and by virtue of the laws of the State of Michigan in the construction of its road," approved March 22, 1869:

When received.	When issued.	No. of bond.	Amount.	Interest.		Bond due.	Date of surrender.	To whom surrendered.
				Rate %.	When payable.			
February 18, 1870	June 1st, 1869.	1	1,000	10 %	1st Monday in Feb.	1st Monday in Feb., 1870.	February 18, 1870.	A. H. Morrison, P. of C. and M. L. S. R. R. Co., gov. ctftk.
"	"	2	1,000	"	"	" 1871.	"	"
"	"	3	1,000	"	"	" 1872.	"	"
"	"	4	1,000	"	"	" 1873.	"	"
"	"	5	1,000	"	"	" 1874.	"	"
"	"	6	1,000	"	"	" 1875.	"	"
"	"	7	1,000	"	"	" 1876.	"	"
"	"	8	1,000	"	"	" 1877.	"	"
"	"	9	1,000	"	"	" 1878.	"	"
"	"	10	1,000	"	"	" 1879.	"	"
"	"	11	1,000	"	"	" 1880.	"	"
"	"	12	500	"	"	" "	"	"

44 And the said counsel for the plaintiff, further to maintain the said issue on his part, produced and read in evidence a duly certified copy of the certificate of the governor of the State of Michigan, dated February 18, A. D. 1870, addressed to the honorable E. O. Grosvenor, State treasurer of Michigan. A copy of which writing so offered in evidence is as follows:

45 STATE OF MICHIGAN, EXECUTIVE OFFICE,
Detroit, Feb. 18, 1870.

Hon. E. O. GROSVENOR,
State Treasurer, Lansing:

I, Henry P. Baldwin, governor of the State of Michigan, hereby certify that the Chicago and Michigan Lake Shore Railroad Company has constructed that portion of its railroad commencing at the St. Joseph River, in the village of St. Joseph, Berrien County, Michigan, and extending through the township of Chicaming, and to its intersection with the Michigan Central Railroad at New Buffalo; and that said road is constructed in all respects in compliance with the provisions of act No. 45, laws of 1869, approved March 22, 1869, and in compliance with the conditions upon which the Township of Chicaming, in said Berrien County, at a special election held for such purpose on the 24th day of May, in the year of our Lord one thousand eight hundred and sixty-nine, voted to issue its bonds to aid said company, and that said company is thereby entitled to the eleven thousand and five hundred dollars in bonds of said Town-
46 ship of Chikaming, voted, issued, and deposited with the treasurer of this State for the purposes of said company in the construction of its road.

In witness whereof I have hereunto set my hand this eighteenth day of February, in the year of our Lord one thousand eight hundred and seventy.

HENRY P. BALDWIN,
Governor of the State of Michigan.

STATE OF MICHIGAN, STATE TREASURER'S OFFICE,
Lansing, Jan. 18*th*, 1877.

I, Wm. B. M'Creery, State treasurer of said State, do hereby certify that the foregoing is a true copy of the only certificate in my office purporting to be given by any governor of said State relating to any bond or bonds purporting to have been given by the Township of Chikaming, in the county of Berrien, in said State; and I further certify that I have carefully compared said copy with the original certificate now duly remaining on file in my office, and that said copy is a true copy of said original certificate and of the whole thereof.

47 In witness whereof I have hereunto set my signature officially, at my office, at Lansing, the State capital of said State, this 12th day of January, A. D. 1877.

WM. B. M'CREERY,
State Treasurer.

UNITED STATES OF AMERICA,
State of Michigan, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do here-

by certify that Wm. B. McCreery, whose official attestation appears to the annexed instrument, was at the time of signing the same, State treasurer in and for said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such State treasurer full faith and credit ought to be given in all courts of justice and elsewhere.

And I further certify that I am well acquainted with the handwriting of the said Wm. B. McCreery, and verily believe his signature to said attestation to be genuine.

In testimony whereof I have hereunto set my hand and affixed the
48 great seal of the State of Michigan, at Lansing, this twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

{ GREAT SEAL OF THE STATE OF MICHIGAN. } E. G. D. HOLDEN,
Secretary of State.

49 And hereupon the said counsel for the plaintiff rested his case.

And thereupon the said counsel for the defendant, to maintain and prove the said issue on his part, read in evidence the plaintiff's bill of particulars duly served in this case, of which bill of particulars the following is a copy:

50 UNITED STATES OF AMERICA:

The circuit court of the United States for the western district of Michigan.

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHICKAMING.

SIR: You will please take notice that the annexed is a true copy and description of the bonds and coupons declared upon in said case, and that the same constitutes a bill of particulars of the plaintiff's demand, and for the recovery of which this action is brought.

Dated November 30th, 1877.

Yours, &c.,

HUGHES, O'BBIEN & SMILEY,
Plaintiff's Attorneys.

To EDWARD BACON, Esq.,
Defendant's Attorney.

51 JUNE 1ST, 1869.

UNITED STATES OF AMERICA. STATE OF MICHIGAN.

No. 3.] COUNTY OF BERRIEN, TOWNSHIP OF CHICKAMING. [$1,000.

Authorized by a vote of the people of the Township of Chickaming.

Know all men by these presents that the Township of Chickaming hereby acknowledge to owe and promises to pay to the Chicago and Michigan

Lake Shore Railroad Company, or bearer, one thousand dollars, lawful money of the United States of America, on the first Monday of February, in the year of our Lord one thousand eight hundred and seventy-two, at the office of the treasurer of the county of Berrien, with interest at the rate of ten per centum per annum, payable annually on the first Monday of February in each year, on the surrender of the annexed coupons as they severally become due.

This bond is executed and issued under the provisions of and in conformity to an act of the legislature in the State of Michigan, entitled "An act to enable any township, city, or village to pledge its aid, by loan or donation, to any railroad company now chartered or organized, or that may be hereafter organized, under and by virtue of the laws of the State of Michigan, in the construction of its road," approved March 22, 1869.

(On margin:) One thousand dollars.

[50 ct. inter. rev. stamp. O. L. N. June 1st, 1869. 50 ct. inter. rev. stamp.]

In testimony whereof the supervisor of said township and the
52 township clerk thereof have signed their names hereto as required by the act aforesaid, and dated the bond as authorized by the vote of the people.

OLIVER L. NEWKIRK,
Supervisor of Chickaming Township.

O. C. GILLETTE,
Township Clerk.

On the back of which bond appears the following endorsement:

"This bond was delivered by me to the Chicago and Michigan Lake Shore Railroad Company under the provisions of act No. 45, approved March 22, 1869, the eighteenth day of February, 1870, and will bear interest from that date.

"H. D. BARTHOLOMEW,
"*Dep. State Treasurer.*"

Upon the back of said bond also appears the said act of the legislature of Michigan referred to in said bond, and appended thereto the following certificate:

"This is to certify that the township herein named has not issued bonds under the above act to the full amount allowed by said act, and that the said law in every respect was observed by both the people and the authorities of the said township in voting the aid to the within named railroad company, upon which vote the bond is issued under act aforesaid.

"OLIVER L. NEWKIRK,
"*Supervisor Township of Chickaming.*

"O. C. GILLETTE,
"*Clerk Township of Chickaming.*"

53 Also three other bonds similar to the above, except that they are numbered, respectively, 4, 6, and 7.

Attached to said bond number 7 are two coupons, in the words & figures following, to wit:

"$100.] [No. 7.

"The Township of Chickaming will pay to the bearer, at the office of

the treasurer of the county of Berrien, on the first Monday of February, 1875, one hundred dollars, interest due on their bond.

"OLIVER L. NEWKIRK,
"*Supervisor of Township.*

"O. C. GILLETTE,
"*Township Clerk.*"

The other said coupon is similar to above in all respects, except that it is payable on the first Monday in February, 1876.

Attached to said bond numbered 6 is one coupon similar to the one above set forth, except that is numbered 6.

(Indorsed:) U. S. circuit court, west. dist. Mich. Samuel M. Carpenter vs. Township of Chickaming. Copies bonds and bill of particulars. Received & filed November 8, 1878. Henry M. Hinsdill, clerk circuit court. Hughes, O'Brien & Smiley, pl'ff's att'ys.

54 And thereupon the said counsel for the defendant, further to maintain and prove the said issue on his part, read in evidence the articles of association of the Chicago and Michigan Lake Shore Railroad Company, the company named in the bonds aforesaid, being dated April 23d, A. D. 1869, and filed in the office of the secretary of state, at Lansing, April 24th, A. D. 1869, of which articles of association the following is a copy:

55 CHICAGO AND MICHIGAN LAKE SHORE RAILROAD COMPANY.

Articles of association.

[5-c. stamp, cancelled.]

We, the undersigned, subscribers to the capital stock of the Chicago and Michigan Lake Shore Railroad Company, a corporation to construct, operate, and maintain a railroad in the State of Michigan, between the St. Joseph River, at the village of St. Joseph, in the county of Berrien, in said State, to some point on the north line of the State of Indiana west of the township of Galien, in said county of Berrien, for the purpose of forming a body corporate and availing ourselves of the rights, privileges, and immunities hereto belonging, in pursuance of chapter sixty-seven (67) of the compiled laws of the State of Michigan and of the acts amendatory and supplementary hereto, and also for the purpose of availing ourselves of the benefits of an act of the legislature of the State of Michigan passed during the session of 1869, entitled "An act to enable any township, city, or village to pledge its aid by loan or donation to any railroad company now chartered or organized or that may hereafter be organized under and by virtue of the laws of the State of Michigan in the construction of its roads," approved March 22, 1869, do hereby enter into the following articles of association, to which we hereunto subscribe our names in our own proper persons:

56

[5-c. stamp, cancelled.]

ARTICLE 1ST. The name of this corporation shall be The Chicago and

Michigan Lake Shore Railroad Company, and the same shall continue a corporation for the period of nine hundred and ninety-nine years.

ARTICLE 2ND. The capital stock of said company shall be the sum of one million of dollars ($1,000,000), and the same shall be divided into ten thousand (10,000) shares of one hundred (100) dollars.

ARTICLE 3D. The said railroad shall be constructed with "T" or contin'-ous rail.

ARTICLE 4TH. The said railroad shall be graded, constructed, built from the St. Joseph River, at the village of St. Joseph, in the county of Berrien, in the State of Michigan, to some point on the north line of the State of Indiana west of the township of Galien, in said county of Berrien, in said State of Michigan, the estimated length being thirty (30) miles, as near as may be.

[5-c. stamp, cancelled.]

57 ARTICLE 5TH. The board of directors shall consist of seven stockholders, and the following-named persons are hereby named and appointed directors of said company, to hold their offices as such until their successors are elected in pursuance of laws now in force relating hereto, viz: Alexander H. Morrison, Benjamin C. Hoyt, Warren Chapman, Curtis Boughton, George Bridgman, David Ballentine, and Robert A. Comolly; and the board of directors above named shall forthwith proceed to make a code of by-laws by which the company and its officers shall be governed, and file the same, with the other papers, in the office of the company, at St. Joseph, in the county of Berrien, State of Michigan.

ARTICLE 6TH. The following named persons are appointed commissioners to open books for the purpose of procuring subscriptions to the capital stock of said company: Fitz H. Stevens, Horace W. Guernsey, Wm. R. Morrison, Asa E. Perkins, and Evelyn D. Crane.

ARTICLE 7TH. The names of the stockholders of this association, their respective places of residence, and the number of shares held by each stockholder are as follows:

58 [5-c. stamp, cancelled.]

Names.	Residence.	No. of shares.
A. H. Morrison,	St. Joseph, Mich.,	(132) one hundred and thirty-two.
B. C. Hoyt,	" "	(10) ten shares.
Warren Chapman,	" "	(1) one.
Curtis Boughton,	" "	(1) one.
B. F. King,	" "	(1) one.
John H. Lee,	" "	(1) one.
Enoch C. Hoyt,	" "	(1) one.
John Martin,	" "	(1) one.
William Boyne,	" "	(1) one.
C. P. Hayward,	" "	(1) one.
H. W. Guernsey,	"	(1) one.
A. L. Chandler,	"	(1) one.
Wm. R. Morrison,	"	(1) one.
R. B. Duncan,	"	(1) one.
S. L. Williams,	"	(1) one.
Geo. W. Kingsley,	"	(1) one.

D. W. Perkins,	"	(1) one.
Hiram Brown,	"	(1) one.
F. H. Stevens,		(1) one.
George Brigdman,	Laketon,	(1) one.
O. W. Oviatt,	St. Joseph,	(1) one.
C. W. Ormsbee,	" "	(1) one.
George S. Clapp,	"	(1) one.
Lyman Collins,	"	(1) one.
S. F. Sutherland,		(1) one.
Asa E. Perkins,		(1) one.
E. D. Crane,	"	(1) one.
R. A. Conolly,	Waukegan, Ills.	(1) one.
David Ballentine,	Waukegan, Ills.,	(132) one hundred and thirty-two.

[5-c. stamp, cancell d.]

59 STATE OF MICHIGAN,
Berrien County, ss:

Be it remembered that on this the twenty-third day of April, 1869, before me, a notary public in and for said county, personally appeared R. A. Conolly, David Ballentine, Benjamin C. Hoyt, and Curtis Boughton, who, being duly sworn, upon their oath say they were duly selected as directors of the Chicago and Michigan Lake Shore Railroad Company, as specified in the foregoing articles of association, and that there has been one thousand dollars per mile of said contemplated railroad bona fide subscribed to the capital stock of said railroad company, and that five per cent. of the same has actually been paid in cash to the directors of said company, to wit, one thousand five hundred dollars.

R. A. CONALLY.
DAVID BALLENTINE.
BENJAMIN C. HOYT.
CURTIS BOUGHTON.

[5-c. stamp cancelled.]

Subscribed and sworn to before me this 23d day of April, A. D. 1869.
[L. S.] A. H. MORRISON,
Notary Public, Berrien County, Michigan.

60 STATE OF MICHIGAN,
Office of the Secretary of State, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of association of the Chicago and Michigan Lake Shore Railroad Company and the affidavit hereto attached with the original filed in this office April 24, 1869, and that it is a true and correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this 10th day of November, in the year of our Lord one thousand eight hundred and seventy-six.

{ THE GREAT SEAL OF THE STATE OF MICHIGAN. }
E. G. D. HOLDEN,
Secretary of State.

61 And thereupon the said counsel for the defendant, further to maintain and prove the said issue on his part, read in evidence the articles of association of the Lake Shore Railroad Company of Western Michigan, dated June 25th, 1869, and filed in the office of the secretary of state of Michigan July 3d, 1869, of which articles of association the following is a copy:

62 LAKE SHORE RAILROAD COMPANY OF WESTERN MICHIGAN.

Articles of association.

We, the undersigned subscribers to the capital stock of "Lake Shore Railroad Company of Western Michigan," a company to construct, operate, and maintain a railroad in the State of Michigan, from the south side of the St. Joseph River at the village of St. Joseph, in the county of Berrien, in said State, to the Muskegon River, at or near its mouth, north of the village of Muskegon, in the county of Muskegon, in State aforesaid, and passing through the counties of Van Buren, Allegan, and Ottawa, and partially through the counties of Berrien and Muskegon, for the purpose of forming a body corporate, and availing ourselves of the rights, privileges, and immunities thereto belonging, in pursuance of chapter sixty-seven (67) of the compiled laws of the State of Michigan, and of the acts amendatory and supplementary thereto, and also for the purpose of availing ourselves of the benefits of an act of the legislature of the State of Michigan, passed during the session of 1869, entitled, "An act to enable any township, city, or village to pledge its aid, by loan or donation, to any railroad company now chartered or organized, or that may hereafter be organized
63 under and by virtue of the laws of the State of Michigan in the construction of its road," approved March 22nd, 1869, do hereby enter into the following articles of association, to which we hereunto subscribe our names in our own proper persons:

[U. S. rev. stamp, 5 c., cancelled.]

ARTICLE 1ST. The name of this company shall be the Lake Shore Railroad Company of Western Michigan, and the same shall continue a corporation for the period of nine hundred and ninety-nine years.

ARTICLE 2ND. The capital stock of said company shall be the sum of three million dollars ($3,000,000), and the same shall be divided into thirty thousand (30,000) shares of one hundred ($100) dollars each.

ARTICLE 3D. The said railroad shall be constructed with "T" or continuous rail.

[U. S. rev. stamp, 5 c., cancelled.]

ARTICLE 4TH. The said railroad shall be graded, constructed, built from the south side of the St. Joseph River, at the village of St. Joseph, in the county of Berrien, in the State of Michigan, to the Muskegon River, at or near its mouth, north of the village of Muskegon, in the county of Muskegon, in the State aforesaid, and passing entirely through the counties of Van Buren, Allegan, and Ottawa, and partially through the counties
64 of Berrien and Muskegon, in said State of Michigan, the estimated length being ninety (90) miles, as near as may be.

ARTICLE 5TH. The board of directors shall consist of seven stockhold-

ers, and the following-named persons are hereby named and appointed directors of said company, to hold their offices as such until their successors are elected in pursuance of laws now in force relating thereto, viz: Alexander H. Morrison, Benjamin C. Hoyt, Horace W. Guernsey, Asa E. Perkins, R. B. Duncan, Warren Chapman, and David Ballentine, and the board of directors above named shall, as soon as may be, proceed to enact a code of by-laws by which the company and its officers shall be governed, and file the same with the other papers in the office of the company, at St. Joseph, in the county of Berrien, State of Michigan.

[U. S. rev. stamp, 5 c., cancelled.]

ARTICLE 6TH. The following named persons are appointed commissioners to open books for the purpose of procuring subscription to the capital stock of said company: Fitz H. Stevens, Wm. R. Morrison, Asa E. Perkins, Evelyn D. Crane, and Horace W. Guernsey.

ARTICLE 7th. The names of the stockholders of this association,
65 their respective places of residence, and the number of shares held by each stockholder are are as follows:

Names.	Residence.	No. of shares.
David Ballentine.....	Waukegan, Ill's.....	(438) four hundred and thirty-eight.
A. H. Morrison.....	St. Joseph, Mich.....	(438) four hundred & thirty-eight.
Curtis Boughton	" " "	(1) one.
Benjamin C. Hoyt.....	" " "	(1) one.
F. H. Stevens.....	" " "	(1) one.
H. W. Guernsey.....	" " "	(1) one.

[U. S. rev. stamp, 5 c., cancelled.]

W. R. Morrison.....	" " "	(1) one.
Warren Chapman.....	" " "	(1) one.
Robert B. Duncan.....	" " "	(1) one.
Benj. F. King.....	" " "	(1) one.
John Walkinson.....	" " "	(1) one.
D. W. Perkins.....	" " "	(1) one.
O. W. Oviatt.....	" " "	(1) one.
Hiram Brown.....	" " "	(1) one.
H. C. Guernsey.....	" " "	(1) one.
P. E. Jennings.....	" " "	(1) one.
I. W. Harris.....	" " "	(1) one.
J. Jacobson.....	" " "	(1) one.
H. M. Brown.....	" " "	(1) one.

[U. S. rev. stamp, 5 c., cancelled.]

E. C. Hoyt.....	" " "	(1) one.
O. K. Webster.....	" " "	(1) one.
S. F. Sutherland.....	" " "	(1) one.
A. P. Hayward.....	" " "	(1) one.
W. M. Smith.....	" " "	(1) one.
John H. Lee.....	" " "	(1) one.

A. E. Perkins ..... " " " ..... (1) one.
Geo. W. Kingsley..... " " " ..... (1) one.
Stephen Powell .. " " " ..... (1) one.
66 E. D. Crane..... " " " ..... (1) one.

STATE OF MICHIGAN,
Berrien County, ss:

Be it remembered that on this the 25th day of June, A. D. 1869, before me, a notary public in and for said county, personally appeared David Ballentine, B. C. Hoyt, Warren Chapman, Horace W. Guernsey, & R. B. Duncan, who, being duly sworn upon their oath, say they were duly elected as directors of the Lake Shore Railroad Company of Western Michigan, as specified in the foregoing articles of association, and that there has been one thousand dollars per mile of said contemplated railroad bona fide subscribed to the capital stock of said railroad company, and that five per cent. of the same has actually been paid in cash to the directors of said company, to wit, four thousand five hundred and ten ($4,510) dollars.

DAVID BALLENTINE.
WARREN CHAPMAN.
HORACE W. GUERNSEY.
R. B. DUNCAN.
B. C. HOYT.

[U. S. rev. stamp, 5 ct., cancelled.]

Subscribed and sworn to before me this the 25th day of June, A. D. 1869.

[NOTARIAL SEAL.] A. H. MORRISON,
Notary Public, Berrien County, Michigan.

67 STATE OF MICHIGAN,
Office of the Secretary of State, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of association of the Lake Shore Railroad Company of Western Michigan, and of the affidavit thereto attached, with the original filed in this office July 3d, 1869, and that it is a true and correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this ninth day of November, in the year of our Lord one thousand eight hundred and seventy-six.

{ THE GREAT SEAL OF THE STATE OF MICHIGAN, A. D. MDCCCXXXV. } E. G. D. HOLDEN,
Secretary of State.

68 And thereupon, the said counsel for the defendant, further to maintain and prove the said issue on his part, read in evidence consecutively and without objection two certified copies of annual reports, with the endorsements thereon and certificates thereto attached, of which writings so given in evidence the following are copies:

69 OFFICE OF C. AND M. L. S. RAILROAD COMPANY,
St. Joseph, Dec. 31, 1869.

To the Auditor-General of the State of Michigan:

The following annual report of the Chicago and Michigan Lake Shore

Railroad Company for the year ending December 31, 1869, is respectfully submitted:

1. Capital stock of the company..... $4,000,000 00
   Amount of capital stock actually paid in..... 6,010 00
2. Amount expended for purchase of lands..... 12,981 84
   " " construction of road..... 138,964 49
   " " buildings.
   " " engines and cars.

3. Amount and nature of indebtedness:
   Temporary loans..... 158,388 26
   Amount due to corporation.

4. Amount received for transportation of passengers.
   " " " " property.
   " " " " mails.
   " " from other sources.

5. Amount of freight:—Products of the forests..... tons
   Animals..... tons
   Vegetable food..... tons
   Other agricultural products..... tons
   Manufactures..... tons
   Merchandise..... tons
   Other articles..... tons

70 6. Amount paid for repairs..... $.....
   " " " engines..... $.....
   " " " cars..... $.....
   " " " buildings..... $.....
   " " " salaries..... $.....

7. Number and amount of dividends..... $.....
   When paid.
8. Number of engine-houses.
   " " shops.
   " and character of engines.
   " " " " cars.

9. Number of miles run by passenger trains.
   " " " " " freight "
   " " " " " other "

10. Number of men employed and their occupation, viz, average number of men employed in constructing road-bed:
   Since June 1st, 1869..... 250
   President..... 1
   Secretary..... 1
   Treasurer..... 1
   Chief engineer..... 1
   Ass't engineers..... 2
   Others at different times in engineer corps..... 7

11. Number of persons injured in life or limb, and the cause of such injury, viz: None.

12. Whether any accidents have arisen from carelessness or negli-
71 gence of any person in the employment of the corporation. Whether such person is retained in the service of the corporation.

13. Has the corporation received any land grant? No.
In case it has, under what law?
Number of acres reserved for it.
" " " confirmed to it.
" " " sold.
Rate per acre sold for (average)..... $.....
Received in payment, cash..... $.....
bonds of the company..... $.....
stock " " ..... $.....
Number of acres contracted to be sold and not deeded.
Rate per acre contracted to be paid (average)..... $.....
Amount received upon the contracts..... $.....

If contracted to be sold to a stockholder in the corporation or any member, officer, agent, or attorney thereof—

Name of such person.	Number of acres contracted to be sold to him.	Rate per acre.	Am't paid on contract.	Remarks.

72 14. Amount of municipal aid received.

Name of municipality.	Am't rec'd.	Money or bonds.	At what rate bonds sold.	For how much bonds sold.	Am t of com. on sale of bonds.	To whom commission paid.	Conditions of aids. (Under what acts obtained.)
Township of St. Joseph, Berrien County.	$46, 000	Bonds.	Not sold.	.....	.....	.....	Donation under act of March 22, 1869.
Township of Lincoln, Berrien County.	13, 500	Bonds.	Not sold.	.....	.....	.....	Donation under act of March 22, 1869.
	59, 500						

73 Amount invested in the original construction and stocking or in any new construction or stocking of road opened for use:

Capital stock..... $ .....
Earnings of road..... $ .....
Municipal aid..... $ .....
Proceeds of sales of land..... $ .....
Loans..... $ .....
From other sources..... $ .....

Total..... .....

Branches.

Length of main line, 120 miles.

Termini connects with M. C. R. R. at New Buffalo, and is to terminate at Muskegon.

When road opened for use: Not opened for use.

REMARKS.—It is expected that the first division of the road from New Buffalo to St. Joseph (27½ miles) will be completed so as to admit the running of passenger and freight trains within sixty days.

The officers are:

A. H. MORRISON, *Pres't.*
H. W. GUERNSEY, *Sec'y.*
DAVID BALLENTINE, *Treas.*

74 STATE OF MICHIGAN,
County of Berrien, ss:

David Ballentine, being duly sworn, says that he is the treasurer of the Chicago and Michigan Lake Shore Railroad Company, and that the foregoing report is true and correct, according to the best of his knowledge and belief.

DAVID BALLENTINE.

Subscribed and sworn to before me, a notary public in and for said county, this tenth day of January, 1870.

DAMON A. WINSLOW,
Notary Public.

STATE OF MICHIGAN,
County of Berrien, ss:

A. H. Morrison, being duly sworn, says that he is president (pres't or acting sup't) of the Chicago and Michigan Lake Shore Railroad Company, and that the foregoing report is true and correct, according to the best of his knowledge and belief.

A. H. MORRISON.

Subscribed and sworn to before me, a notary public in and for said county, this 10th day of January, 1870.

DAMON A. WINSLOW,
Notary Public.

(Indorsed:) Annual report of the Chicago and Michigan Lake Shore Railroad Company for the year ending December 31st, 1869. Rec'd and filed Jan'y 21, 1870. H. R. Pratt, deputy auditor-gen'l. Road not opened for use.

75 STATE OF MICHIGAN,
Office of the Auditor-General, ss:

I, Ralph Ely, auditor-general of the State of Michigan, do hereby certify that I have compared the annexed copy of the only report of any Chicago and Michigan Lake Shore Railroad Company for the year ending December 31, 1869, with the original now on file in this office, and that it is a correct transcript therefrom, and of the whole of such original.

And I further certify that on due and diligent search and examination in my office, I am unable to find any paper or writing dated or filed prior to December 31, 1869, by or on behalf of any Chicago and Michigan Lake Shore Railroad Company, or by or on behalf of any corporation bearing any such name.

In testimony whereof I have hereunto set my hand, at Lansing, this eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

RALPH ELY,
Auditor-General of the State of Michigan.

76 UNITED STATES OF AMERICA,
State of Michigan, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do hereby certify that Ralph Ely, whose official attestation appears to the annexed instrument, was at the time of signing the same auditor-general in and for said State, duly elected and qualified, and authorized by the laws of this State to make such attestations, and that to all his official acts as such auditor-general full faith and credit ought to be given in all courts of justice and elsewhere.

And I do further certify that I am well acquainted with the handwriting of the said Ralph Ely, and verily believe his signature to such attestation to be genuine.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

{ THE GREAT SEAL OF THE STATE OF MICHIGAN. } E. G. D. HOLDEN,
Secretary of State.

77 OFFICE OF CHICAGO AND MICHIGAN
LAKE SHORE RAILROAD COMPANY,
St. Joseph, Mich., Sept. 1st, 1870.

To the auditor-general of the State of Michigan:

The following annual report of the Chicago and Mich. Lake Shore Railroad Company for seven months, commencing Feb. 1st and ending August 31st, 1870, is respectfully submitted:

1. Capital stock of the company		$4,000,000 00
Amount of capital stock actually paid in		$182,200 00
2. Amount expended for purchase of lands		$29,088 61
" " construction of road		
" " buildings		$3,114 42
" " engines and cars		$
3. Amount and nature of indebtedness:		
$500,000 mortgage bonds sold for $400,000.		$500,000 00
Temporary loans		$78,301 75
Amount due the corporation		$
4. Amount received for transportation of passengers		$11,833 65
" " " " " property		$7,497 43
" " " " " mails		$668 40

	" " from other sources	$521 85
5.	Amount of freight, products of the forests	3,643 tons.
	animals	72 tons.
	vegetable food	tons.
	other agricultural products	685 tons.
	manufactures	tons.
78	merchandise	786 tons.
	other articles	111 tons.
		tons.
		tons.
		tons.
6.	Amount paid for repairs.	
	" " " engines	$16,000 00
	" " " cars	$19,725 00
	" " " buildings	$3,114 42
	" " " salaries	$1,400 00

7. Number and amount of dividends, none.
When paid.
8. Number of engine-houses, two.
" " shops.
" and character of engines, two first-class engines of 24 tons.
Number and character of cars:

Passenger cars	1
Mail, exp., & baggage car	1
Box cars	5
Flat cars	25
9. Number of miles run by passenger trains	9,995
" " " " freight "	9,995
" " " " other "	10,860

10. Number of men employed, and their occupation, viz:

Conductors	2
Brakemen	2
Civil engineers and assistants	16
79 Mechanical engineers	3
Station men	6
Carpenters	3
Blacksmiths	2
Clerks	1
Contractors	3
Laborers, most of whom are employed in construction	600
	638

11. Number of persons injured in life or limb, and the cause of such injury, viz: None.
12. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation: No.
Whether such person is retained in the service of the corporation.
13. Has the corporation received any land grant? No.

80 Amount of municipal aid received:

Name of municipality.	Amount received.	Money or bonds.	At what rate bonds sold.	For how much bonds sold.	Am't of com. on sale of bonds.	To whom com paid. Hypothecated.	Conditions of aid. (Under what act.)
Township of St. Joseph	*$46,000					$42,000	Act of 1869; all donated.
" " Lincoln	13,500					13,500	
" " Lake	13,500			$12,100			
" " Chikaming	11,500					11,500	
" " New Buffalo	14,000					13,000	

* Bonds collected as cash of municipality, $4,000.

N. B. There were sold of Lake Township bonds at par $6,500; at 80c. per dollar, $7,000. The other township bonds were hypothecated for monies to aid in construction.

81 Amount invested in the original construction or stocking or in any new construction or stocking of road opened for use and in process of construction:

Capital stock	$182,200 00
Earnings of road	20,571 33
Municipal aid	16,000 00
Proceeds of sales of land:	
Loans (proceeds of 1st mortgage bonds)	$400,000 00
From other sources	78,309 75
Total	$697,181 08*

Length of main line, 120 miles; branches, ; termini, New Buffalo and Muskegon; when road opened for use, Feb. 2nd, '70, a part of the line was opened for use—27½ miles.

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Names.	Officers.	P. O. address.
A. H. Morrison	President	St. Joseph, Mich.
H. W. Guernsey	Secretary	do. do.
Wm. R. Morrison	Ass't treasurer	do. do.
S. R. Hughes	Superintendent	do. do.

DIRECTORS.

James F. Joy	Detroit.
James F. Ballentine	do.

* REMARKS.—$440,000.00 of which was expended in constructing the 27½ miles in operation. (The balance expended in constructing that part of the road not in operation.) There will be opened for use, about the first of March, the entire line from New Buffalo to Muskegon; but 27½ miles are as yet operated; 35 miles more are graded, and about ready for the iron. A large force of men is placed on the unfinished portion, so as to complete it, ready for business, at the time above set forth.

A. H. Morrison	St. Joseph.
B. C. Hoyt	"
Warren Chapman	"
Curtis Boughton	"
Wm. R. Morrison	"

STATE OF MICHIGAN,
County of Berrien, ss:

William Morrison, being duly sworn, says that he is the ass't treasurer of the Chicago and Michigan Lake Shore R. R. Company, and that the foregoing report is true and correct, according to the best of his knowledge and belief.

WM. R. MORRISON.

Subscribed and sworn to before me, a notary public in and for said county, this first day of September, 1870.

D. A. WINSLOW,
Notary Public.

83 STATE OF MICHIGAN,
County of Berrien, ss:

A. H. Morrison, being duly sworn, says that he is the president [pres't or acting sup't] of the Chicago and Michigan Lake Shore R. R. Company, and that the foregoing report is true and correct, according to the best of his knowledge and belief.

A. H. MORRISON.

Subscribed and sworn to before me, a notary public in and for said county, this first day of September, 1870.

D. A. WINSLOW,
Notary Public.

(Indorsed:) Annual report of the Chicago and Michigan Lake Shore Railroad for seven months ending August 31, 1870. Received and filed Oct. 12, 1870. H. R. Pratt, dep. aud. gen.

84 STATE OF MICHIGAN,
Office of the Auditor-General, ss:

I, Ralph Ely, auditor-general of the State of Michigan, do hereby certify that I have compared the annexed copy of the only report of any Chicago and Michigan Lake Shore Railroad Company for the year ending December 31, 1870, with the original now on file in this office, and that is a correct transcript therefrom and of the whole of such original. And I further certify that on due and diligent search and examination in my office I am unable to find any other paper or writing dated or filed after December 31st, A. D. 1869, and prior to December 31st, 1870, by or on behalf of any Chicago and Michigan Lake Shore Railroad Company, or by or on behalf of any corporation bearing any such name.

In testimony whereof I have hereunto set my hand, at Lansing, this eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

RALPH ELY.
Auditor-General of the State of Michigan.

85 UNITED STATES OF AMERICA,
State of Michigan, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do hereby certify that Ralph Ely, whose official attestation appears to the annexed instrument, was, at the time of signing the same, auditor-general in and for said State, duly elected and qualified, and authorized by the laws of this State to make such attestations; that to all his official acts as such auditor-general full faith and credit ought to be given in all courts of justice and elsewhere.

And I do further certify that I am well acquainted with the handwriting of the said Ralph Ely, and verily believe his signature to said attestation to be genuine.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this 12th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

{ THE GREAT SEAL OF THE STATE OF MICHIGAN. } E. G. D. HOLDEN,
Secretary of State.

86 And thereupon the said counsel for the defendant, further to maintain and prove the said issue on his part, offered to read in evidence a certain certified statement by Roscoe D. Dix, register of deeds of the county of Berrien, in the State of Michigan, signed and sealed officially by said register of deeds, of which writing a copy is as follows:

STATE OF MICHIGAN, COUNTY OF BERRIEN,
Office of the Register of Deeds of said County, ss:

I, Roscoe D. Dix, register of deeds of said county of Berrien, in said State of Michigan, do hereby certify that upon due and diligent search and examination in my office I find that prior to the fifteenth day of June, 1870, no map was ever filed in said office by any corporation called the "Chicago and Michigan Lake Shore Railroad Company," or having any such name. And I further certify that prior to said day, there was never filed in said office any map by any corporation relating to any railroad line between New Buffalo, in said county, and the north line of said county.

87 In witness whereof I have hereunto set my hand officially, and affixed my official seal this eighth day of December, A. D. 1876, at the office of the register of deeds of said county, at the village of Berrien Springs, in said county.

[OFFICIAL SEAL.] ROSCOE D. DIX,
Register of Deeds.

But to the reading in evidence of said writing, signed by said register, the said counsel for the plaintiff then and there objected, on the grounds that it was immaterial and pretended to certify to matters that were not to be evidenced by a certificate. And the said judge did then and there declare and deliver his opinion that the said objections so taken by the plaintiff's counsel ought to be allowed, and that the said writing ought not to be admitted in evidence, and did accordingly decide that the same should be excluded and not read in evidence, and said writing was accordingly excluded. But to said opinion and decision of said judge the said counsel for the defendant did then and there on behalf of said defendant duly except.

And thereupon the said counsel for the defendant, further to maintain and prove the said issue on his part, offered to read in evidence a
88 certified copy of an agreement and writings for consolidation between the two railroad companies, whose articles of association were as aforesaid given in evidence, said agreement for consolidation being dated July 12, 1869, and filed in the office of the secretary of state of Michigan July 19, A. D. 1869, and duly certified by said secretary under the great seal of the State of Michigan.

And in connection with his said offer to read in evidence said agreement and writings for consolidation, the said counsel for the defendant offered and proposed to the court to follow up the reading in evidence of said agreement and writings with evidence showing that the consolidation mentioned in said agreement and writings was promptly and fully carried into effect, and that the new corporation mentioned in said agreement and writings forthwith after said consolidation took and thenceforward continued to use and have exclusive possession of all the property and franchises of the two consolidating companys, and that neither of said consolidating companies, after the said consolidation, did any acts. And of the
89 aforesaid agreement and writings for consolidation, with the certificate thereto annexed, the following are copies:

90 At a meeting of the directors of the Chicago and Michigan Lake Shore Railroad Company, held at the office of the president, A. H. Morrison, in St. Joseph, Mich., on the 12th day of July, 1869, there were present A. H. Morrison, D. Ballentine, R. A. Conolly, and W. Chapman.

On motion of W. Chapman, it was unanimously resolved to tender to the directors of the Lake Shore Railroad Company of Western Michigan the following terms of consolidation with the Chicago and Michigan Lake Shore Railroad Company, to wit: The new corporation to be called the Chicago and Michigan Lake Shore Railroad Company. The number of directors to be seven. The first election of directors to be on the 13th day of July, 1869, at the office of A. H. Morrison, in St. Joseph, Michigan. The number of shares of capital stock to be forty thousand, of one hundred dollars each. The shares of capital stock in the two corporations (to be consolidated) that have already been subscribed to each to be transferred from the books of the Lake Shore Railroad Company of Western Michigan to those of the Chicago and Michigan Lake Shore Railroad Company, and those on the books of the latter named corporation to remain on its
91 books, which hereafter are to be the property and records of the new corporation. The new corporation to continue as such for the period of nine hundred and ninety-nine years. These conditions, if accepted by the directors of the Lake Shore Railroad Company of Western Michigan, to be submitted to the stockholders thereof, and, if approved by them, to be submitted to the stockholders of the Chicago and Michigan Lake Shore Railroad, and if approved by them, then the terms of consolidation as above set forth to be considered complete and perfected. On motion of W. Chapman, it was further resolved to have the secretary call

a meeting of the stockholders of this company in the event the action hereby contemplated render it necessary.

[U. S. int. rev. stamp, 5 c., cancelled]

The meeting of directors then adjourned.

A. H. MORRISON,
President C., M. & L. S. Railroad Company.

(Signed and sealed in duplicate.)
H. W. GUERNSEY,
[L. S.] *Secretary C. and M. L. S. Railroad Co'y.*

ST. JOSEPH, MICHIGAN, *July* 12, 1869.

92 At a meeting of the directors of the Lake Shore Railroad Company of Western Michigan, held at the office of A. H. Morrison, there was present A. H. Morrison, David Ballentine, Warren Chapman, H. W. Guernsey, R. B. Duncan, and Asa E. Perkins.

On motion of H. W. Guernsey, it was unanimously resolved to accept the terms of consolidation proposed by the Chicago and Michigan Lake Shore Railroad Company, to wit:

The new corporation to be called the Chicago and Michigan Lake Shore Railroad Company.

[U. S. int. rev. stamp 5 c., cancelled.]

The number of directors to be seven. The first election of directors to be on the thirteenth day of July, 1869, at the office of A. H. Morrison, in St. Joseph, Michigan. The numbers of shares of capital stock to be forty thousand, of one hundred dollars each. The shares of capital stock in the two corporations (to be consolidated) that have already been subscribed to each to be transferred from the books of the Lake Shore Railroad Company of Western Michigan to those of the Chicago and Michigan Lake Shore Railroad Company, and those on the books of the latter-named corporation to remain on its books, which are hereafter to be the property and records of the new corporation.

93 The new corporation to continue as such for the period of nine hundred and ninety-nine years.

On motion of H. W. Guernsey, it was voted to submit the above articles of consolidation to a meeting of the stockholders of the Lake Shore Railroad Company of Western Michigan to be held at the office of A. H. Morrison on the 12th day of July, 1869.

The meeting then adjourned.

A. H. MORRISON,
President.

[L. S.] W. R. MORRISON, *Secretary.*

At a meeting of the stockholders of the Lake Shore Railroad Company of Western Michigan, held at the office of A. H. Morrison, in St. Joseph, Michigan, on the 12th day of July, 1869, F. H. Stevens was called to the chair, and H. W. Guernsey elected secretary. The terms of consolidation proposed by the directors of the Chicago and Michigan Lake Shore Railroad Company to the directors of the Lake Shore Railroad Company of Western Michigan, and by them accepted, having been submitted to this

meeting of stockholders, are hereby sanctioned by the vote of a ma-
94 jority in interest of the stockholders; that is to say, provided, always, the same shall be ratified by the stockholders of the Chicago and Michigan Lake Shore Railroad Company. The number of votes at the meeting being 882, there were cast for consolidation 882, which is a majority in interest of the stockholders of the company.

[U. S. int. rev. stamp 5 c., cancelled.]

F. H. STEVENS,
Chairman Stockholders' Meeting L. S. R. Co. of W. M.

H. W. GUERNSEY, *Secretary.*

[U. S. int. rev. stamp, 5 c., cancelled.]

At a meeting of the stockholders of the Chicago and Michigan Lake Shore Railroad Company, held in St. Joseph, Michigan, on the 12th day of July, 1869, David Ballentine, esq., was called to the chair and Warren Chapman appointed secretary. The terms of consolidation proposed by the directors of the Chicago and Michigan Lake Shore Railroad Company to the directors of the Lake Shore Railroad Company of Western Michigan having been accepted, and the stockholders of the said last named company, a majority in interest thereof, having, after submission to them, voted to consolidate their company with the Chicago and Michigan Lake Shore Rail-
road Company, it was, on motion of H. W. Guernsey, resolved that
95 the stockholders of the Chicago and Michigan Lake Shore Railroad Company sanction the terms of consolidation which the directors of the company had proposed to the directors of the Lake Shore Railroad Company of Western Michigan, and which had been accepted, and that the vote be by ballot. Upon which two hundred and sixty-nine were cast in favor of consolidating, which is a majority in interest of the stockholders of the Chicago and Mich. L. S. Railroad Co.

DAVID BALLENTINE,
Chairman.

WARREN CHAPMAN,
Secretary.

[U. S. int. rev. stamp, 5 c., cancelled.]

STATE OF MICHIGAN,
Office of the Secretary of State, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of consolidation between the Chicago and Michigan Lake Shore Railroad Company and Lake Shore Railroad Company of Western Michigan with the original filed in this office July 19, 1869, and that it is a true and
96 correct transcript therefrom, and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

{ GREAT SEAL OF THE STATE OF MICHIGAN. }

E. G. D. HOLDEN,
Secretary of State.

97 But to the reading in evidence of said agreement and writings for consolidation the said counsel for the plaintiff then and there objected, on the grounds that the same were irrelevant and immaterial to this issue, and incompetent.

And the said judge did then and there declare and deliver his opinion that the said objections so taken by the plaintiff's counsel ought to be sustained, and that the said agreement and writings ought not to be admitted in evidence, and did accordingly decide that the said agreement and writings should be excluded and not read in evidence, and said agreement and writings were accordingly excluded. And to said opinion and decision of said judge the said counsel for the defendant did then and there on behalf of said *of said* defendant duly except.

And thereupon the said counsel for the defendant, further to maintain and prove the said issue on his part, did offer to read in evidence a duly certified copy of other agreement and writings for consolidation, dated
98 August 15th, 1870, and duly filed in the office of said secretary of state September 24, 1870.

Of which agreement and writing, the following is a copy:

99 This indenture, made and entered into by and between the Chicago and Michigan Lake Shore Railroad Company, of the one part, and the Grand Rapids and Lake Shore Railroad Company this the 15th day of August, A. D. 1870, witnesseth:

That the roads of the two parties when built will form a continuous or connected railroad from New Buffalo, in the State of Michigan, to Muskegon, Whitehall, Pentwater, and Manistee; and whereas, as the said roads are not and will not be parallel with each other, and are not conterminous with each other, and the said parties may therefore legally consolidate with each other under the authority of the law of the State; and whereas it is deemed by both the said companies to be advisable and for the interest of each to consolidate their property and effects and stock each with the other, so as to form one corporation and one railroad under the same management and control:

Therefore it is mutually agreed by the said parties to and with each other that the two corporations organized under the above corporate names shall be and become consolidated with each other, and that the
100 stock of the two corporations shall become one stock, and the roads constructing and to be built by and under said companies shall become one road, and their property one property, to be managed by one company, as if they had been originally one and the same company, upon the following terms and conditions, viz:

1st. The name of the corporation formed by such consolidation and union of interests shall be the Chicago and Michigan Lake Shore Railroad Company.

2nd. The stockholders of each of said companies shall be and remain stockholders in the said consolidated company to the same extent and with the same rights, and subject to the same requirements, obligations, and duties, as they possessed or as were incumbent upon them in said separate companies in which they subscribed their stock, or became entitled thereto, and in all cases where certificates of stock have been issued the holders thereof shall be required to surrender the said certificates to be cancelled,

and shall receive therefor in exchange certificates in the consolidated company to the same amount.

101 And it is further agreed as one of the terms of this consolidation that each share of full paid stock in one corporation shall be deemed of equal value as a share of full paid stock of the other, and other shares of the same value, in proportion to the amounts which may have been paid thereon, and that the rights and obligations of part paid stock shall be the same in the consolidated company as they would have been in the separate companies now by this instrument consolidated into one, and subject to the like calls and responsibilities; and that the consolidated company shall succeed to and become possessed of all the rights as against said stock and the holders thereof as each of said companies possessed before consolidation.

[5 c. int. rev. stamp, cancelled.]

3d. The said consolidated company shall become possessed of all the rights and property, equities and claims and assets, whether personal or real, with the rights to enforce the same, which belonged to or were due to or were possessed and owned by the said companies before this in-

102 strument was made, and shall pay all the debts and obligations of each of the said separate companies.

4th. The number of directors shall be nine, and the first election held under the new organization shall be on the first Wednesday of September, at the banking office in the corner of Sweet's Hotel, at Grand Rapids, at noon, and shall be called by notifying each stockholder in the two companies personally of the time and place of such meeting, or by a printed notice thereof, directed to him through the post-office, at his place of residence, which notice shall be given to the stockholders of each company, party to this agreement, by the present secretary of said company, or by notices signed by him. This provision being made because until the election of the new board there is no other way in which the stockholders can be called together.

[5 c. int. rev. stamp, cancelled.]

5th. The number of shares of the capital stock of the company shall be fifty thousand (50,000), of one hundred dollars ($100) each, but the number of shares of the capital stock shall be diminished if the same shall not all be actually subscribed for, or may be increased by order

103 of the board of directors and with the approval of the stockholders at an annual or special meeting called for that purpose.

6th. The permanent organization of the board for each year shall consist in the election of a president, a vice-president, and secretary. The board shall also have the power to appoint such other officers and agents as may be found expedient or necessary.

[5 c. int. rev. stamp, cancelled.]

7th. This indenture, having been first approved by the respective boards of directors of the two companies herein mentioned and parties hereto, shall be submitted to the stockholders of each respectively and separately at a meeting thereto called specially for the purpose of considering the same and for their approval, and having been approved by them shall become the agreement of the two companies.

In witness whereof the respective parties have caused their respective presidents to execute this instrument by affixing their signatures and the seals of the respective companys.

[5 c. int. rev. stamp, cancelled.]

[L. S.] A. H. MORRISON,
President Chicago and Michigan Lake Shore Railroad Company.

104 [L. S.] M. L. SWEET,
President Grand Rapids and Lake Shore Railroad Company.

STATE OF MICHIGAN,
Office of the Secretary of State, ss:

I, E. G. D. Holden, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of consolidation between the Chicago and Michigan Lake Shore R. R. Co. and the Grand Rapids and Lake Shore R. R. Co. with the original filed in this office Sept. 24, 1870, and that it is a true and correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this fifth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

(GREAT SEAL OF THE) E. G. D. HOLDEN,
(STATE OF MICHIGAN.) *Secretary of State.*

105 But to the reading in evidence of said agreement and writings for consolidation the said counsel for the plaintiff then and there objected, on the grounds that the same were irrelevant, incompetent, and immaterial to the issue.

And the said judge did then and there declare and deliver his opinion that the said objections so taken by the plaintiff's counsel ought to be sustained, and that the said agreement and writings ought not to be admitted in evidence, and did accordingly decide that the said agreement and writings should be excluded and not read in evidence, and said agreement and writings were accordingly excluded.

And to the said opinion and decision of said judge the said counsel for the defendant did then and there, on behalf of said defendant, duly except.

And thereupon the said counsel for the parties on both sides of the case conceded as a fact before the jury that the vote of the township of Chikaming, referred to in the governor's certificate aforesaid, and in
106 every one of the bonds aforesaid, was a vote of aid by donation under section one (1) of the general enabling act, printed on the back of every one of said bonds.

And thereupon both parties, by their respective counsel, rested.

And thereupon the said counsel for the defendant then and there, on behalf of said defendant, presented to said judge certain written requests, of which the following is a copy:

107 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit and western district of Michigan, southern division.

SAMUEL M. CARPENTER
vs.
THE TOWNSHIP OF CHIKAMING.

Now comes said defendant, by Edward Bacon, its attorney, and in this cause requests the court now here to charge the jury as follows:

EDWARD BACON,
Defendant's Att'y.

1. In this action the plaintiff cannot recover on any of the bonds mentioned in the declaration.

2. The plaintiff cannot in this action recover on any written contract of the defendant mentioned in the declaration.

3. In this action the rights of the plaintiff to any bond mentioned in the declaration are no better than those of an assignee.

4. The railroad company mentioned in the declaration could not in this court recover on any bond or coupon mentioned in the declaration, and therefore the plaintiff cannot in this court recover on any bond or coupon mentioned in the declaration.

108 5. The plaintiff cannot in this action recover on any bond or coupon mentioned in the declaration unless such bonds or coupons were legally signed by the township clerk of Chikaming Township.

6. The plaintiff cannot in this action recover on any bond or coupon not legally signed by any town clerk.

7. In this action, under the pleadings, the burthen of proof is on the plaintiff to show that O. C. Gillette was town clerk of Chikaming Township.

8. The burthen of proof is on the plaintiff to show the legal execution of every bond and coupon which he has offered in evidence.

9. Under the evidence in this case no bond or coupon mentioned in the declaration became the contract of the defendant prior to being signed by O. C. Gillette.

10. Under the evidence in this case none of the bonds and coupons mentioned in the declaration because the contract of the defendant prior to being signed by O. C. Gillette.

11. Under the evidence in this case the bond and coupons offered in evidence were not issued until after they were signed by O. C. Gillette.

109 12. Any officer of the township of Chikaming who held in his possession the bonds or coupons mentioned in the declaration prior to the time that they were signed by O. C. Gillette was so holding them in his possession as an agent of said township.

13. The evidence shows without conflict that no bond or coupon mentioned in the declaration was signed by O. C. Gillette until after the first day of January, A. D. 1870.

14. No bond mentioned in the declaration is a bill of exchange or promissory note.

15. The governor's certificate offered in evidence was not sufficient to

authorize the delivery of the bonds to the railroad company to which the bonds were delivered.

16. Under the evidence in this case the governor's certificate offered in evidence was no authority for the delivery of any bonds or coupons to any railroad company other than the company in whose aid the bonds offered in evidence in this case were voted.

17. The burthen of proof is on the plaintiff in this case to show that he is a bona fide purchaser of bonds, and that he paid for the
110 same a consideration.

Dated Nov. 8, 1878.

EDWARD BACON,
Def't's Att'y.

(Indorsed:) United States of America. In the circuit court of the United States for the sixth circuit and western district of Michigan, southern division. Samuel M. Carpenter vs. The Township of Chikaming. Defendant's requests for instructions to the jury. Received and filed November 8, 1878. Henry M. Hinsdill, clerk. Edward Bacon, defendant's att'y.

111 And thereupon the said judge charged the jury in these words only:

GENTLEMEN OF THE JURY: The plaintiff is entitled to a verdict in this case, on the evidence, of $6,271.75. Render your verdict accordingly. The verdict will be entered for $6,271.75.

And thereupon the said counsel for the defendant did then and there, on behalf of said defendant, except to the charge of the judge as aforesaid.

And also, further, did then and there, on behalf of said defendant, except to the refusal and omission of the said judge to charge the jury in accordance with either or any of the aforesaid written requests presented on behalf of the defendant.

And thereupon the said judge, under the charge and with the directions aforesaid, left the aforesaid issue and the evidence so given on the trial thereof as aforesaid to the said jury; and the jury aforesaid then and there gave their verdict for the said plaintiff, and assessed his damages on occasion of the premises at the sum of $6,271.75, and judgment was thereupon rendered and entered in this suit accordingly.

112 The foregoing is a statement of all the evidence and proceedings on the trial of the issue aforesaid.

And inasmuch as that the said several matters so produced and given in evidence on the part of said defendant, and by its counsel objected and insisted on as a bar to the action aforesaid, do not appear by the record of the said trial and verdict, the counsel for the defendant did then and there propose the aforesaid exceptions to the opinions and decisions, omissions and refusals, and charge of the said judge, and did request him to sign this bill of exceptions containing the several matters aforesaid, pursuant to the statute in such made and provided.

And thereupon the said judge, at the request of the counsel for the defendant aforesaid, and within the time duly allowed therefor, hath signed this bill of exceptions, pursuant to the statute aforesaid, on this tenth day of

May, in the year of our Lord one thousand eight hundred and seventy-nine.

S. L. WITHEY,
Dist. Judge.

113 To HUGHES, O'BRIEN and SMILEY,
Attornies for Samuel M. Carpenter, the plaintiff named in the annexed copy of bill of exceptions:

GENTLEMEN: Please take notice that on Saturday, the 4th day of January next, A. D. 1879, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, before the honorable Solomon L. Withey, district judge, at his office at the United States court-rooms, in the city of Grand Rapids, in the State of Michigan, I shall, in behalf of the township of Chikaming, defendant named in said annexed copy, present to said judge the original bill of exceptions of which the annexed is a copy, and I shall then and there, on behalf of said defendant, apply to said judge to settle and sign said bill of exceptions, in order that the record and proceedings in the case wherein said bill is offered may, with all convenient speed on proper writ of error, be removed into the Supreme Court of the United States.

Dated December 26, A. D. 1878.

EDWARD BACON,
Attorney for the Township of Chikaming, the defendant within named.

(Indorsed:) United States of America. In the circuit court of the United States for the 6th circuit & western dist. of Michigan, southern division. Samuel M. Carpenter vs. The Township of Chikaming. Bill of exception. E. Bacon, att'y for def't.

114 STATE OF MICHIGAN,
County of Berrien, ss:

George Lambert, of Niles, in said county, being first duly sworn, says that on the 26' day of December, A. D. 1878, at about eleven o'clock in the forenoon, at the post-office in said city, this deponent duly mailed, all postage prepaid, a package inclosed in an envelope duly directed to Hughes, O'Brien and Smiley, attorneys at law, Grand Rapids, Michigan; said package containing papers as follows: A duplicate of the notice hereto annexed, and therewith attached to said notice was a copy of the annexed bill of exceptions; but in said copy so served the plaintiff's bill of particulars, and the defendant's requests filed in this cause and one certificate of authentication attached to one of the annual reports set forth in the annexed bill of exceptions were not written out.

Subscribed and sworn to before me this 26th day of December, A. D. 1878.

JOSEPH S. BACON,
Notary Public, Berrien County, Michigan.

(Indorsed:) No. 1200. U. S. circuit court, west. district of Mich. S. M. Carpenter vs. Township of Chickaming. Bill of exceptions. Filed May 10, 1879. H. M. Hinsdill, cl'k.

115 THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

I, Henry M. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the original files and records in said cause and the whole thereof (with original bill of exceptions attached).

Witness my official signature and the seal of said court, in Grand Rapids, this 24th day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] HENRY M. HINSDILL, *Clerk.*

116 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE TOWNSHIP OF CHIKAMING, PLAINTIFF IN ERROR,
vs.
SAMUEL M. CARPENTER, DEFENDANT IN ERROR.

Assignment of errors.

Afterwards, to wit, on the day of October, in the year A. D. 1879, before the judges of the Supreme Court of the United States, comes the said plaintiff in error, The Township of Chikaming, by George W. Lawton, its attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment as aforesaid, there are manifest errors, as hereinafter stated, to wit:

1. The court erred in overruling all the objections on the part of the defendant, The Township of Chikaming, in the circuit court, to the reading in evidence of the bonds and coupons mentioned in the plaintiff's aforesaid bill of particulars.

117 2. The court erred in allowing the counsel for Samuel M. Carpenter, the plaintiff, in said circuit court, to read in evidence said bonds and coupons mentioned in said bill of particulars, notwithstanding the objections thereto on the part of said defendant, The Township of Chikaming.

3. The court erred in receiving in evidence every bond offered in evidence by said counsel for said plaintiff in the circuit court.

4. The court erred in receiving in evidence every coupon offered in evidence by said counsel for said plaintiff.

5. The court erred in sustaining the plaintiff's objections taken to the certified statement of Roscoe D. Dix, register of deeds of Berrien County aforesaid, and in excluding said statement offered in evidence on the part of the defendant.

6. The court erred in sustaining the plaintiff's objections to the
118 duly certified copies of the writings and agreement for consolidation, dated July 12, A. D. 1869, and filed in the office of the secretary of state of Michigan July 19, 1869, being between the two railroad companies whose articles of association were given in evidence.

7. The court erred in excluding said certified copies so as aforesaid offered in evidence on the part of the defendant, The Township of Chikaming.

8. The court erred in sustaining the plaintiff's objections to the duly certified copies of the writings and agreement for consolidation, dated August 15th, 1870, and filed in the office of the secretary of state of Michigan September 24, A. D. 1870.

9. The court erred in excluding the last mentioned copy so as aforesaid offered in evidence on the part of the defendant.

10. The court erred in disregarding in his charge to the jury all the written requests presented on behalf of The Township of Chikaming.

119 11. The court erred in omitting to charge the jury according to either or any of the written requests presented on behalf of The Township of Chikaming as aforesaid.

12. The court erred in charging the jury, as follows: "Gentlemen of the jury: The plaintiff is entitled to a verdict in this case, on the evidence, of six thousand two hundred and seventy-one dollars and seventy-five (6,271.75). Render your verdict accordingly. The verdict will be entered for six thousand two hundred and seventy-one dollars and seventy-five cents."

13. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in the form aforesaid, was given for the said defendant in error, Samuel M. Carpenter, and against the said plaintiff in error, The Township of Chikaming, whereas by the law of the land the said judgment ought to have been given for the said Township of Chikaming and against the said defendant in error. And the said

120 Township of Chikaming, plaintiff in error as aforesaid, by its said attorney, prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings, may be reversed, annulled, and altogether held for nothing, and that said Township of Chikaming may be restored to all things which it hath lost by occasion of said judgment.

GEORGE W. LAWTON,
Attorney for Plaintiff in Error.

(Indorsed:) United States of America. In the supreme court. No. 1084. Township of Chikaming, pl't'ff in error, vs. Samuel M. Carpenter, def't in error. Ass'g't of errors. Filed 28' November, 1879. Geo. W. Lawton, att'y for pl't'ff in error.

(Indorsement on cover:) No. 154. The Township of Chickam ing plaintiff in error, vs. Samuel M. Carpenter. W. Michigan C. C. U. S. Filed 28th November, 1879.

16-463

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

THE TOWNSHIP OF CHICKAMING, - *Plaintiff in Error,*

vs.

SAMUEL M. CARPENTER, - - - *Defendant in Error.*

NUMBER 154, OCTOBER TERM, 1882.

BRIEF OF EDWARD BACON, OF COUNSEL FOR PLAINTIFF IN ERROR.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

THE TOWNSHIP OF CHICKAMING, - *Plaintiff in Error,*

vs.

SAMUEL M. CARPENTER, - - - *Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is an action of assumpsit on the bonds and coupons, all dated June 1, 1869, set forth in the plaintiff's bill of particulars (50–53) under his declaration. The assignment of errors is in the record (116–120).

The three last special counts in the declaration aver unequivocally, and the first count avers sufficiently, that the Chicago and Michigan Lake Shore Railroad Company was the obligee named in the bonds. That the same corporation received the bonds from the State Treasurer and delivered the same to the plaintiff, Samuel M. Carpenter.

The plea is the statutory general issue with a notice authorized by statute to admit evidence of any special defense therein stated.

The affidavit of Albert L. Drew subjoined to the plea (25-28) shows that he was Supervisor of the township defendant, that he had knowledge of the circumstances of the signing of the bonds and coupons, and that they were obtained in February, 1870, from Oliver L. Newkirk, supervisor of said township, by Alexander H. Morrison, that the railroad company named as obligee in the bonds never became entitled to them, and that the

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The figures in brackets indicate folios of the record.

railroad company named in the certificate on each bond (52) being the company to whom the bonds were surrendered February 18th, 1870, never existed till after their date, that the bonds were never legally executed by any town clerk and were never legally delivered.

The bill of exceptions contains a statement "of all the evidence and proceedings" (112). On the trial the Court, notwithstanding due objection, admitted in evidence the bonds and coupons without any evidence as to the handwriting or official character of any town clerk, and the defendant excepted.

The plaintiff gave in evidence (43-46) certified copies from the State records reciting (43) that the bonds and coupons were in one day, February 18th, 1870, received by the State Treasurer and surrendered to A. H. Morrison, President of the Chicago and Michigan Lake Shore Railroad Company (42). That the Governor's certificate given the same day recited that same company in aid of which the bonds were voted May 24th, 1869, was entitled to the bonds. (45).

The defendant proved without objection the articles of association of the Chicago and Michigan Lake Shore Railroad Company filed April 14th, 1869 (54-60). Also the articles of association of the Lake Shore Railroad Company of Western Michigan, filed July 3d, 1869 (62-67). Also the annual report of a Chicago and Lake Shore Railroad Company for for thn year ending December 31st, 1869 (69) showing that no municipal aid had been received from the township of Chickaming (72-73). Also a report of this Chicago and Michigan Lake Shore Railroad Company from February 31st to August 31st, 1870, showing that this company was the one which received the bonds of Chickaming township. That these bonds had been all donated and were hypothecated, not sold (80.)

These two annual reports show that the line of the Chicago and Michigan Lake Shore Railroad company was 120 miles in length and included the lines of the two companies whose articles of association had been given in evidence, and that A. H. Morrison was President of the Chicago and Lake Michigan Railroad company named in each report, (73-82.) He swears (74-83) that eace report is true and correct. The last report, being that which covers the month of February, 1870, shows that the company for which he received the bonds was the company named in this last report, (42–80), and whose railroad line was formed by adding together the railroad lines of the two companies, whose articles of association were given in evidence. The line of the original Chicago and Michigan Lake Shore railroad company, being 30 miles in length, and extending from the village of St. Joseph, at the mouth of the river St. Joseph, southward to the Indiana State line, (56), all in the county of Berrien, and the line of the Lake Shore Railroad company of Western Michigan being 90 miles in length, extending northward from the village of St. Joseph through several counties in Michigan. The village of New Buffalo and the railroad junction there, mentioned in the Governor's certificate and in the two railroad reports was more that two miles north of the Indiana State line and but 27½ miles from St. Joseph (73-81.)

The Auditor General's certificates, likewise in evidence without objection, (75–84), show that the original Chicago and Michigan Lake Shore Railroad company never filed any report with the Auditor General. To show what was the corporation, *de facto* or *de jure*, to which the bonds were sur-

rendered February 18th, 1870, and that it did not exist till after the date of the vote and after the date of the bonds. The defendant offered to prove the writings for consolidation of the two corporations whose articles of association were in evidence. These writings were filed July 19th, 1869, in the office of the Secretary of the State of Michigan. (88–96.)

The defendant offered and proposed to the Court to follow up the reading in evidence of said writings, with evidence showing that the consolidation mentioned in said writings was promptly and fully carried into effect, and that the new corporation forthwith after said consolidation took and thenceforth continued to use and have exclusive possession of the property and franchises of the two consolidating companies, and that *neither of said consolidating companies after said consolidation did any acts* (88). The plaintiff objected that these writings were irrelevant, immaterial and incompetent (97) The Court excluded the writings. The defendant excepted. The defendant to show user by the corporation *de facto* formed by the consolidation, offered to prove that it entered into a new agreement for consolidation (99) which was to dispose of the property and stock of all the above named corporations. The agreement for this consolidation dated in August, 1870 (98) was not filed till a few days after the last report (104). The plaintiff repeated his objection, and the Court excluded the evidence. The defendant excepted (103). The defendant presented requests for instructions (107-110). The Court instructed the jury to find a verdict for the plaintiff for the full amount of his claims, including more than $1,700 for interest. The defendant excepted (111).

POINTS AND AUTHORITIES.

I

The Court erred in refusing to instruct the jury that the plaintiff could not maintain this action, and in charging them to render a verdict for the plaintiff.

This action will not lie.

This suit was commenced in 1877 (18), Section 914 of the R. S. of the U. S. for 1871, then required conformity with the State Courts practice.

In 1869, when the bonds were voted and made, and ever since 1846, a statute of which the following is a copy has been in force in Michigan. Compiled Laws of Michigan, 1871, Section 6,630:

"When a judgment shall be recorded against any township or against any township officers in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same unless reversed, shall be levied and collected as other township charges and, when so collected, shall be paid by the township treasurer to the person to whom the same shall have been adjudged upon the delivery of a proper voucher therefor."

This statute has ever been construed to prohibit any suits upon liquidated demands against any township, and to limit the creditor to his remedy by mandamus.

Marathon vs. Oregon decided in 1860, 8th Mich. 378

"Where a duty exists in a township to pay a specific and ascertained charge, it would be unjust to both parties, debtor and creditor, to permit or require a suit at law, the township ought not to be put to useless ezpense by the fault of its officers, and the creditor ought not to be put to delay or a double pursuit." * * * * * * Same case page 383: "The Court below committed no error in holding that the plaintiff's action would not lie."

Township of Dayton vs. Henry Rounds, 27 Mich. 82.

"Both of these cases are suits to recover upon bounty bonds issued by the township of Dayton in 1863." * * * * "A remedy by action is not the proper remedy in such a case, and any refusal by the town officers to do their duty should be redressed by mandamus. A township ought not to be subjected to the expense of a suit upon such a claim when the law requires it to be presented to the board for allowance. Such has been the settled practice in this State for many years.

People et. rel. Anderson, vs. Township Board of LaGrange, 2 Mich. 187.
Marathan vs. Oregon, 8th Mich. 372.
People vs. Auditors of Wayne county, 5 Mich. 223.
People vs. Townships of Porter and Calvin, 18 Mich. 101

See also McArthur vs. Duncan, 34 Mich. 28, citing and approving the last two cases.

Peterson vs. Manistee, 36 Mich. page 9: "As they are all liquidated claims and could not be made any more so by judgment, we must presume that a preper application will either produce payment or furnish ground for a mandamus besides possibly subjecting any willful misconduct to other consequences."

See also Just vs. Wise township, 42 Mich. 574.

Many decisions have established this: That neither the Legislature nor the Courts ought to impair the obligation of contracts by changing the creditors remedies so as to lighten the debtors' burden.

Reason and justice authorize the debtor to appeal to these same decisions against having his burden increased by any change in the creditors remedies.

The township when it voted the bonds might well rely on the law of the land prohibiting the double pursuit first by action at law and afterwards by mandamus prohibiting not only the costs, expense and vexation in the action at law, but also the accruing of interest on the interest added to the principal in the judgment, and depriving the bondholder of the power to become a judgment creditor, and thereby gain advantages, oppress the tax payers, or injure the credit of the township.

No purchaser of the bonds had any right to invent new remedies or to evade the decisions that the law as to the remedy was a part of the contract or to devise means to impair the obligation of the contract in favor of the debtor, prohibiting the suit at law.

U. S. vs. County of Macon, 99 U. S. 591:

"We cannot create new rights nor create new powers. All we can do is to bring existing powers into operation. * * * * * * *
"We have not been referred to any statute which gives a judgment creditor any right to levy taxes which he did not have before the judgment."

VonHoffman vs. City of Quincy, 4. Wall 535.

Also in Walker vs. Whitehead, 16 Wall 317, the Court says:

"Nothing is more material to the obligation of a contract the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the constitution against imparment."

"The obligation of a contract is the law which binds the parties to perform their agreement, Any impairment of the obligation of a contract, the degree of impairment is immaterial—is within the prohibition of the Constitution. * * * * It must be kept with the same force and effect, including the substantial means of inforcement which existed when

it was made."

It has never been true that whenever a non-resident of a State has a claim againhst a citizen thereof for more than five hundred dollars he could always logally commence proceedings in the Federal Court, for in the common case of the death of a the debtor the creditor must begin proceedings for collection in the State Probate Court.

The statutes of the U. S. for the removal of suits and proceedings from State Courts to the Federal Courts are broad enough to remove any reasonable objections of the creditor as to commencing proceedings in the State Court.

The amount of money to be paid on any of the honds or coupons could never be in dispute. It is fully liquidated. All questions concerning these bonds could properly and conveniently be settled in mandamus proceedings.

The decisions of this court in Township of Queensbury vs. Culver, 19 Wall, 84, and County of Gree vs Daniel, 102, U. S. Rep., do not apply. These were cases where the State laws merely gave the creditor a mandamus without judgment. In the case here the law of Michigan not only gives the remedy by mandamus but psohibits any suit on the bonds in question.

Taylor vs. City of Ypsilanti, decided by this Court in March, 1882.

A.

Supplement to the R. S. of U. S., chapter 137, section I: "Nor shall any Circuit or District Court have cognizance of any suit founded on contract in favor of any assignee, unless a suit might have been prosecuted in such Court to recover thereon, if no assignment had been made, *except in cases of promisory notes negotiable by the law, merchant and bills of exchange.*"

The declaration alleges that the bonds and coupons were made, executed and delivered by a Michigan township to a Michigan Railroad company, which transferred them to the plaintiff. In 1875, when the above enactment was made the numerous decisions delaring these bonds and coupons to be negotiable instruments, were well known None of these dicisions had declared these instruments to be promisory notes, negotiable by the law merchant, and certainly they are not bills of exchange. They belong to a well known class of negotiable instruments called municipal bonds and are excluded from the exception,

The prohibition of the statute includes an assignee whether the assignment be verbal or written. The exception in tae similar act of 1789 was in these words—"except in cases of foreign bills of exchange."

The change in this exception, made by the act of 1875, is so limited as to leave these municipal bonds within the prohibition, (Bradley vs. Rhines, administrator, 8 Wall, 398,) and it is submitted that the word "bearer" inserted in the bonds does not make the prohibition inapplicable.

R. R. Co. vs. Howard, 7 Wall, 415.
Ketcham vs. Duncan, 96 U. S. Rep., at page 659.

Had the bonds been payable to the order of the Railroad company named therein they would have been within the prohibition, and it ought not to be

rendered inapplicable by the change of a word. The plaintiff was an assignee and the statute ought not to be avoided by she form of the transfer.

II.

The court erred in admitting in evidence the bonds and coupons without any proof of their execution by any town clerk or acting town clerk. Rule 79 of the Circuit Courts of he State of Michigan, "upon the plea of the general tssue in an action upon any written instrument, under seal or without seal, the plaintiff shall not be put to the proof of the execution of the instrument or hand-writing of the defendant, unless the defendant or some one in his behalf shall file and serve a copy of an affidavit denying the same."

Rule 25 for the Federal Courts of Michigan "upon the plea of the general issue upon any written instrument, under seal or without seal, the plaintiff shall not be put to the prooff of the execution of the instrument or the handwriting of the defendant unless the plea is verified by affidavit."

Rule 41 for said Courts—"in case where no special provision is made by these rules tho compilrd laws and the rules of the Circuit Courts of this State shall govern the proceedings in this Court."

Section 5793 Compiled Laws of Michigan for 1871, in force ever since 1846:

"In all civil actions hereafter to be commenced the general issue shall consist of a demand by the defendant of a trial of the matters set forth in the plaintiff's declaration."

Construed, Ingalls vs. Eaton, 25 Mich., 32.

Section 5794 of same laws:

"To entitle a defendant to avail himself of any matter of defence, which according to the practice as it has heretofore existed, was required to be plead specially, or of which a special notice was required to be given under the general issue or other general plea, the defendant shall annex to his plea of the general issue a notice to the plaintiff, briefly stating the precise nature of such matter of defense."

Decisions of the Supreme Court of Michigan as to the affidavit subjoined to the plea.

Anderson vs. Walker, 34 Mich. 114, decided in 1876:

"As was said in McCormick vs. Bay City, 23 Mich. 457, we do not think an affidavit of this kind should be subjected to any very technical rules of construction. If it appears that a defendant means to contest the execution or delivery, in good faith, any legal questions concerning the sufficiency of the defense should be reserved for the trial. When the facts could all be presented it never was designed that a defendant should be compelled in his affidavit to state every fact, but merely to indicate his defense or to make a plain denial." "Tested by this rule the affidavit in this case could not be treated as an admission of a valid execution." "A defendant cannot be required to swear that the signature appearing upon an instrument is not his signature in order to deny the execution. The signature may be genuine, and yet the instrument a forgery. In such a case he could not deny

the signature under oath. He would admit it but set up facts from which it would appear that he was not bound by or ever executed the instrument sued on."

High vs. Arnold, decided in June, 1882, by Michigan Supreme Court, Northwestern Reporter, Vol. 12, No. 10, page 680: The note was signed Arnold & Ackley, and defendants were declared against as partners. Arnold alone was served with process. To cast upon the plaintiff the burden of proving the note, Arnold made and filed with the justice an affidavit in which, referring to the note which was on file, he affirmed that he did not sign the same, neither did he authorize any person to sign it for him. The justice held that this was not a sufficient denial of the execution of the note by the alleged partnership, and entered up judgment upon it as upon admission. The Circuit Court reversed the judgment.

It has seemed to me that that affidavit was evasive, and that Arnold in making it intended to deny individual execution to accomplish the purpose of partnership execution which perhaps he could not truthfully make. But my brethren think the affidavit sufficient, and it must be so held.

They think that a denial of execution by himself or by any one authorized by him is at least an argumentative denial of execution by any partnership of which he was a member, and that that was sufficient to put the plaintiffs to the proof of the instrument. We all agree that the affidavit should not be technically construed, but should be held sufficient if in good faith it seemed to be intended to meet the plaintiff's case."

The only execution of the bonds by the town clerk which the defendant might legally contradict by affidavit so be subjoined to his plea. The only execution of the bonnd by the town clerk which the plaintiff, by the absence of the affidavit, would be relieved from proving in the ordinary manner was very same set forth in the plaintiff's bill of particulars under his declaration, namely, the execution of the bonds by O. C. Gillette, on the first day of June, 1869, as the true town clerk of Chickaming township on said day.

The bill of particulars under the declaration meant bonds executed by the true town clerk on the first day of June, 1869, and deposited with the State Treasurer within sixty days after the day of the vote mentioned in the Governor's certificate. (See statute hereinafter cited.) The affidavit shows that from April till September, 1869, Alvin G. Barnett was town clerk, and *refused* to sign any of said bonds or coupons, and never signed any of them.

As to bonds not executed by the man who was town clerk of Chickaming township, June 1st, 1869, and not deposited with the State Treasurer until February 15th, 1870. such depcsit thereof not being by any officer of the township, but by A. H. Morrison, President of the Railroad company, who had in the same month obtained the bonds privately and illegally from the supervisor of the township.

The plaintiff was bound to prove in the ordinary manner the legal signing and the legal delivery of such bonds.

Freeman vs. Ellison, 37 Mich., page 462.

O. C. Gillette never was town clerk.

It cannot be true thrt no execution of the bonds by any town clerk was necessary, or that the signature of any unauthorized stranger would be sufficient if the words "town clerk" followed his name.

The case of the Town of Weyauwega vs. Ayling, 99 U. S. Rep., 112, is not applicable, because the creditor in that case proved "that he paid a full and valuable consideration for the coupons prior to their maturity in good faith and without notice of any defect, and the person who signed as town clerk had been the town clerk at the date of the bonds and in duty bound to sign them, (99 U. S., p. 114,) and it was proved that after the execution of the bonds they were delivered by a duly authorized officer to the party entitled to receive them. No town clerk had ever objected to the bonds or refused to sign them. They were signed *nunc pro tunc* for convenience of all parties concerned.

Directly in point

See Anthony v. County of Jasper, 101 U. S. at p. 698.

Compiled laws of Michigan for 1871, sec. 4179, in force ever since 1846, "when a power is vested in several persons all must unite in its execution; but if previous to such execution, one or more of such persons shall die, the power may be executed by the survivor or survivors."

County of Dallas vs. MacKenzie, 94 U. S. Rep., at page 663.
Supervisors vs. U. S., 18 Wall, at page 77.
People vs. Bostwick, 32 N. Y., 45.
Board of Park Commissioners vs. Common Council of Detroit, 28 Mich., 245.
Walnut v. Wade, 103 U. S. 693.

III.

The Court erred in excluding the evidence offered by the defendant as to the supposed consolidation in July, 1869.

All the contents of the articles of association and of the two sworn reports to the Auditor General and his certificates thereto annexed, were given in evidence on the trial without any objection being made thereto. (54-61-75-84.)

The report showed that all the railroad construction which had been done between St Joseph and New Buffalo referred to in the Governor's certificate (45), was done by the Chicago and Michigan Lake Shore Railroad company named in the reports, having a line of 120 miles and being a corporation entirely different from the original Chicago and Lake Shore Railroad company having a line of 30 miles, (73-81); that the company having the line of 120 miles was that for which A. H. Morrison received the bonds of the defendant, (80-42), and which disposed of them. (80.) This evidence being uncontradicted proved the plaintiff to be without the title he had averred in his delaration, namely, that the bonds were delivered by the State Treasurer to the obligee named therein and by said obligee transferred to the plaintiff.

This evidence showed that the delivery was to a corporation entirely different from that named in the Governor's certificate, and showed *prima facie* that the delivery was not as averred in the declaration and was without authority.

For evidence tending to show whether or uot there was any consolidation by which the corporation that received and disposed of the bonds could have become entitled thereto, the township defendant offered the evidence hereintofore stated as to the supposed consolidation in July, 1869, a few weeks after the first company was organized and about eight months before any delivery of the bonds and this evidence was erroneously excluded. (88-97.)

Detroit, L. & L. M. R. R. Co., vs. Stearns, 38 Mich. p. 701.

If this consolidation could not be attacked in this suit, and for this or any other reason must be held valid, the delivery of the bonds by the State Treasurer to the original Chicago and Lake Michigan Railroad Company in February, 1870, as is alleged in the declaration and bill of particulars, would have been without authority, and would have been illegal or impossible, for the original company would have been out of existence in July, 1869, eight months before the delivery, and the new corporation having the line of 120 miles would be entitled to the bonds.

Shields vs. Ohio, 95 U. S. 323.
Township of New Buffalo vs. Cambria Iron Co., decided by this Court March 27, 1882.
Barkley vs. Levee Commissioners, et. al., 93 U. S. Rep. 258.

There was evidence before the jury, and had not the proof of consolidation been excluded, the defendant might well have proceeded with further proof to show that the bonds being a mere donation, (106) were till long after said consolidation legally withheld and kept in its own control at home. That the obligee named in the bonds never earned them. That all the railroad construction done had been by the new corporation. That no town clerk ever signed any of the bonds, and that the offered donation ought to be deemed revoked, and that the bonds were ~~determined~~ obtained by fraud.

Horshman vs. Bates County, 92 U. S. Rep., page 569.
Town of Concord vs. Portsmouth Savings Bank, 92 U. S. Rep. 625.
Town of East Lincoln vs. Davenport, 94 U. S. Rep. 802.
County of Scotland vs. Thomas, 94 U. S. Rep. 691.

A

If the consolidation in July, 1869, was illegal and void, the defendant had a right to introduce the excluded evidence (97) to show the nature of the supposed consolidation, and by what means the transfer of the bonds from the first corporation to the second was claimed.

The proceedings for the consolidation in July, 1869, beginning with the agreement therefor and including the stockholders meetings to confirm the same were all on one day, July 12th, 1869 (90-95).

The Supreme Court of Michigan, in construing the statutes as to railroad companies consolidation, copies of which are hereto annexed, and which

were in force in July, 1869 (90-95), has decided that due notice for at least 30 days must follow a duly signed agrement and precede the stockholders meetings.

Tut le vs. Michigan Air Line Railroad Company, 35 Mich. page 247.
Marquette &c. R. R. Co. v. Langton, 32 Mich. 252.
Rodgers v. Wells, 44 Mich. 412.
Mansfield &c. R. R. Co. v. Drinker, 30 Mich. 126.

There was no agreement signed by directors as required by law. The record of the two stockholders meetings (94-95) purports that the proceedings were by a majority and that a minority was absent, and recites no notice. No legal notice was possible.

The township defendant had nothing to do with the proceedings for consolidation and was not in privity with the new corporation having the line of one hundred and twenty miles. There could be no valid delivery of the bonds except through the State Treasurer. He was in no sense the township. He could be no more than an agent without any power in the least exceeding what was given to him by the vote of May 24, 1869 (45-52.) If the State Treasurer ever legally had possession of the bonds and coupons, he was strictly bound by the statute and the vote of the electors. No prior delivery by the Supervisor to A. H. Morrison, was of any effect. A delivery to a de facto corporation coming into existence after the date of the bonds and without any title by legal consolidation, would be a userpation of power to tax the people. The bonds would be void.

Anthony vs. County of Jasper, 101 U. S. p. 698.
Township of Elmwood vs. Marcy, 92 U. S. 293.

The Supervisor's certificate (52) and the Governor's certificate (45) informed the State Treasurer and all concerned that the vote of the electors was for the original company. No mistake of identity was excusable or could possibly entitle the new corporation to levy a tax.

County of Bates vs. Winters, 97 U. S. 91.
Wilson vs. Salamanca, 99 U. S. 504.
Board of Park Commissioners vs. Common Council of Detroit, 28 Mich. 248.

If the new corporation ever had title to the bonds it was by succession in the nature of assignment which the defendant corporation might lawfully dispute and disprove.

The decisions of this court imply that if in such case the transfer or succession by consolidation were illegal any corporation *de facto* claiming to exist by such consolidation would not be entitled to municipal bonds voted to one of the companies supposed to have consolidated.

Town of East Lincoln vs. Davenport, 94 U. S., at page 804.
Newgent vs. Supervisors, 19 Wall, at page 252.—3

It does not follow that because a township votes to donate bonds to one railroad company, therefore any other railroad company which shall construct any railroad through the township's territory would be entitled to the bonds and to transfer them.

B.

It cannot be that the township whose bonds have been issued and put in circulation without authority must be held to have ratified their issue and circulation unless it succeeds in recapturing them or in stopping their circulation, otherwise there never would be decisions by this Court as there have been that bonds issued without authority were void in the hands of supposed *bona fide* purchasers.

C.

The offer by the defendant to show what was done under the alleged consolidation and that the corporation *de facto* took possession of all the property of the first corporation shows the error by which the evidence of consoldiation was excluded. In particular there was error in excluding the evidence of the second consolidation, that of September, 1870. (99-105) explaining why the last report of the first consolidated company ended with the last month of its existence.

D.

The offer of the defendant to prove (86) that neither of the first consolidating companies, after consolidation, *did any acts*, also shows the error by which the evidence of the first consolidation was excluded, and in particular the certificate of the Register of Deeds of the county in which was all the railroad construction mentioned in the Governor's certificate, was legal evidence on behalf of the defendant, in addition to the evidence by the railroad reports to show that the original railroad company named in the declaration never earned or received the bonds, and seven months before the bonds were even deposited with the State Treasurer ceased to act or exist. There was error in the exclusion of this certificate. (86-87.) Compiled Laws of Michigan, 1875, section 3232 and section 1660, C. L. 1857, copies of which are hereto annexed.

This certificate was legal evidence in addition to the certificates of the Auditor General. (75.)

IV.

The bill of exceptions contains a statement of all the evidence and proceedings on the trial (112), and notwithstanding the state of the evidence before the jury, the plaintiff offered no proof to show he paid anything for the bonds or coupons, or was a bona fide purchaser. The burden was on him to produce such evidence. There was a request for instruction to the jury to this effect (110). The Court erroneously charged to the contrary.

Stewart vs. Lansing, 104 U. S. Rep. 509-510.

V.

The burden of proof was on the plaintiff to show a valid consolidation if any true evidence could entitle him to recover under his present declaration.

The certificate of the Deputy State Treasurer, required by statute and endorsed on every bond (52) showed delivery to the Chicago and Michigan Lake Shore Railroad Company in February, 1870. There was certainly evidence before the jury to show that this company was the corporation organized by supposed consolidation in July, 1869. No other of this name was then acting or apparently in existence.

Further evidence and offers of evidence tending to prove this were excluded.

There was no Governor's certificate for any delivery to this corporation.

If this new corporation had assumed a new name and this new name had appeared in the endorsed certificate, the Supervisor's certificate, also endorsed, (52) would have shown that the vote of aid was "to the within named railroad company upon which vote the bond is issued," plainly meaning the obligee in the bond. The bonds would have carried with them to any purchaser unmistable evidence of unauthorized delivery, and there could be no bona fide purchaser to cut off defenses.

County of Bates vs. Winters, 97 U. S. p. 91.

If the vote of the people and the certificate of the Governor had authorized the State Treasurer to deliver the bonds to one John Smith and the delivery, an important part of the execution of the power to bind the tax payers, had been to another and very different John Smith, and if on the trial the township defendant had produced evidence of the wrong, this evidence would at least have required the plaintiff to prove some title to the bonds in the party obtaining them.

It is certain that the corporation which received the bonds had no title thereto unless by the consolidation in June, 1869.

Township of New Buffalo vs. Cambria Iron Co, decision of this Court in March, 1882, as to this same consolidation, conceded as a fact. The State Treasurer had no power to make a valid delivery of the bonds to whomsoever he pleased, and it does not follow that if he could make valid delivery to the new corporation if it had title by valid consolidation, he could make equally valid delivery to it if there was no consolidation.

It may be that under the decision of this Court, Lincoln vs. Iron Company, 103 U. S. p. 416, the plaintiff could not escape the necessity of proving a legal election. Certainly the burden of proof was on him to prove the consolidation.

Tuttle v. Michigan Air Line R. R. Co., 35 Mich. 247.
Marquette, Houghton and Ontonagon R. R. Co. vs. Langton, 32 Mich. 252
Mansfield, Coldwater & Lake Michigan R. R. Co. vs. Drinker, 30 Mich. 127.
Rodgers v. Wells, 44 Mich., 412.
Shields vs. Ohio, 96 U. S. 323.

The plaintiff not only ignored the consolidation in his declaration, bill of particulars and evidence, but succeeded in excluding all evidence as to the same offered by the defendant. The charge that the jury ought to render a verdict for the plaintiff was erroneous.

The theory of Samuel M. Carpenter in this suit is that he is endowed with absolute right to tax the people of Chickaming township to pay his claims, including all costs, interest and interest upon interest; no matter who signed the bonds and coupons as town clerk or when the signature was affixed; no matter to what corporation the bonds and coupons were delivered, and that

he is under no obligation to aver or prove that he is a bona fide purchaser.

EDWARD BACON,
Of Counsel for Plaintiff in Error.

Schedule of Michigan Statutes governing the execution of the bonds, the making and filing of railroad reports, the consolidation of railroad companies, and the evidence thereof as to railroad maps, and the certificates of the Auditor General and Register of Deeds showing the absence of papers, and as to the times of holding elections of directors and meeting of stockholders.

Sections 4, 5 and 6 of the act mentioned in the declaration, and fully before this Court in Lincoln v. Iron Co., 103 U. S. 415, and Township of New Buffalo v. Cambria Iron Co., above cited, the entire act being printed on every bond. (52.)

Section 4: "Any township or city that may avail itself of the benefits of this act by voting aid to any railroad company as provided herein, shall within sixty days after the question of aid is determined by a vote of the electors of such township or city as provided in section three of this act, issuee its coupon bonds for the amount so determined to be granted, which bonds shall be in sums of not less than one hundred dollars each, and not more than one thousand dollars each, and shall be payable at any time as determined upon by the electors of such township or city, not exceeding twenty years from the date thereof.

Such bonds shall bear interest at a rate of not exceeding ten per cent. per annum, and shall have attached thereto the necessary and usual interest coupons corresponding in dates and numbers with the bonds to which they are attached, which shall be signed by written signatures by the same person or persons executing such bonds.

Such bonds shall, if issued by a city, be executed by the mayor and clerk or recorder thereof as the case may be, under the seal of said city, and if issued by a township, they shall be executed by the supervisor and clerk thereof, and if any city or township issuing such bonds shall have a seal, the same shall be impressed upon each of such bonds. The bonds and coupons attached thereto shall be payable at the office of the treasurer of the county in which such township or city may be situate."

Section 5. "Whenever any such bonds as provided by the provisions of

this act shall have been issued as therein specified the same shall be delivered by the person, persons or officers having charge of the same to the Treasurer of this State, who shall give a receipt therefor and hold the same as trustee for the municipality issuing the same, and for the railroad company for which they were issued and to be disposed of by said Treasurer in discharge of his trust as hereinafter provided."

Section 6. "Upon receipt of any such bonds from any township or city in aid of any such railroad company the Treasurer of this State will immediately register or record the same in a book or books to be kept by him for that purpose in his office, which record shall show the amount, date and number of each bond, the rate of interest which it bears, by what township or city issued, to the benefit of what railroad company the same are issued and the time when payable, which record shall be always open for the inspection of any citizen of this State or other interested person. Such bonds shall be safely kept by said Treasurer for the benefit of the parties interested and be disposed of by him in the following manner: That is to say whenever any railroad company, in aid of which any such bonds may have been issued, shall present to said Treasurer a certificate from the Governor of this State that such railroad company has in all respects complied with the provisions of this act, and is thereby entitled to any of such bonds; the same or such of said bonds as said company shall be entitled to receive shall be delivered to said company, the Treasurer first cutting therefrom, cancelling and returning to the municipality the past due coupons. The Treasurer shall indorse upon each of said bonds the date of such delivery and to whom the same were delivered, and the same shall draw interest only from the time when so delivered, and the Treasurer shall notify the clerk of the township, or recorder or clerk of the city issuing the same, of the date of the delivery of its bonds to such railroad company. The railroad company so receiving such bonds shall pay the State Treasurer one-tenth of one per centum of the par value of all such bonds so delivered, which shall be received by him in full payment of all fees and charges for the custody, recording, endorsing and delivery of said bonds, which money shall be paid into the State treasury. And in case any bond so delivered to said Treasurer by any such township or city shall not within three years from the time when the same were received by him be demanded in compliance with the terms of this act, the same shall be cancelled by said Treasurer and returned to the proper officers of the township or city issuing the same."

Art. No. 82 of Session Laws of Michigan for 1855, Section 32, Compiled Laws of Michigan for 1857, Section 1976 in force until 1871:

"Every railroad corporation in this State shall make an annual report to the Auditor General, which report shall be verified by the oath of the Treasurer or President, and acting superintendent, of the operations of the year ending on the first day of January in each year and shall state:

1. The capital stock and the amount actually paid in.

2. The amount expended for the purchase of lands for the construction of the road for buildings and for engines and cars respectively.

3. The amount and nature of its indebtedness, and the amounts due the corporation.

4. The amount received for the transportation of passengers, of property, of mails, and from other sources.

5. The amount of freight, specifying the quantity in tons, of the products of the forest, of animals, of vegetable food and other ogricultural products, manufactures, merchandise and other articles.

6. The amount paid for repairs, engines, cars, buildiugs and salaries.

7. The number and amount of dividenos and when paid.

8. The number of engine houses and shops of engines and cars and their character.

9. The number of miles run by passenger, freight and other trains respectively.

10. The number of men employed and their occupation.

11. The number of persons in life or limb, and the cause of such injury,

12. Whether any accidents have arisen from carelessnefs or negligence of any emyloyee of the corporation, and whether such person is retained in the service of the corporation."

Act number 82 of Session Laws of Michigan for 1855, in force until 1871, being sections 50 and 51 of said act and sections 1994 and 1995 of the Compiled laws of Michigan for 1357.

Section 1994. "Any railroad company in this State, forming a continuous or connected line with any other railroad company, may consolidate with such other company, either in or out of this State, into a single corporation, provided that no such companies having parallel lines or lines diverging and converging but being conterminious, shall be permitted to consolidate themselves into one corporation. The directors of two or more corporations may enter into an agreement under the corporate seal of each for the consolidation of the said two or more companies, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of the directors thereof, which shall not be less than seven nor more than thirteen, the time and the place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, the manner of converting the shares of capital in each of said two or more corporations into shares in such new corporation with such other details as they shall deem necessary to perfect such consolidation of said corporations, and such new corporation shall possess all the powers, rights and franchises conferred upon svch two or more corporations, and shall be subject to all the restrictions and perform all the duties imposed by the provisions of their respective charters or laws of organization not inconsistent with the provisions of this act. Such agreement of the directors shall not be beemed to be the rgreement of the said two or more corporations until after it has been submitted to the stockholders of each of said corporations separately at a meeting thereof, to be called as aforesaid, and has been sanctioned by such stockholders by a vote of a majority in interest of the stockholders present at such meeting in person or by proxy and voting, each share of capital stock being entitled to one vote, and when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders separately after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or moae corporations."

Section 1995 of C. L. of Mich., 1857:

"Upon making the agreement mentioned in the preceding section in the manner required therein, and filing a duplicate or counterpart thereof in the office of the Secretary of State, the said two or more corporations mentioned or referred to in the said section, shall be merged in the new corporation provided for in such agreement to be known by the corporate name therein mentioned, end the details of such agreement shall be carried into effect as provided therein.

Section 1960 C. L. of 1857, being section 16 of said act:

"Every such company proceeding to construct a part of their road into or through any county named in their certificate of association, shall make a map of the rounte intended to be adopted by such company, which shall be certified by a majority of the directors and filed in the office of the Register of Deeds of such county for inspection and examination of all persons interested therein."

Compiled laws of Michigan of 1871, Section 5932, in force since 1846:

"Whenever any officer to whom the legal custody of any paper, document or record shall belong, shall certify that he has made diligent examination in his office for such paper, document or record, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified in all causes, matters and proceedings, in the same manner and with the like effect as if such officer had personally testified to the same in open court or before whom such cause, matter or proceeding may be pending."

Act No. 259 of the session laws of Michigan for 1859:

Section 1. "The People of the State of Michigan enact: That section six of the act entitled "An act to provide for the incorporation of railroad companies," be and is hereby amended so as to read as follows: Sec. 6. It shall be the duty of the directors to provide for by by-law and to call every year, and in case of their neglect so to do, a majority of the stockholders may call an annual election of directors, and at such time and place as may be appointed in some county in which the road is to or shall run, and at which time and place there shall be a general meeting of the stockholders in person or by proxy. And a special meeting of the stockholders may be called at any time by the directors or by the stockholders owning not less than one-fourth of the stock in value, by giving notice of such meeting as is hereinafter provided. At least thirty days notice of the time and place of every general or special meeting of the stockholders shall be given in one oa more daily newspapnrs printed in the city of Detroit, and also in one or more newspapers printed in the county where the pricipal office of the company is situated if it be not in said city.

Provided: That such notice when given by the stockholders shall state the object of such meeting. Evidence of such meeting may be perpetuated by the affidavit of any person having knowledge thereof, and at any meeting of the stockholders held pursuant to this section, a majority in value of the stockholders may remove from office any of the directors or other officer of the company, and elect others in their stead; and the president and directors and officers and agents of the company in the exercise of their respective powers and duties, shall at all times be governed by and be subject to such rules, rules, regulations and directions as the stockholders holding a

majority in value of the stock may adopt at any such meeting, and at every such meeting it shall be competent for any stockholder to appear and vote by proxy as well as in person. If at any meeting of the stockholders a majority in value of the stock is not represented in person or by proxy, the same shall be adjourned by such as are present from day to day, not exceeding three days without doing any business, when if such majority do not appear and attend, the meeting shall be dissolved; and no person shall at any time be elected director of the company without the vote in his favor of at least a majority in value of the stock."

Session laws of Michigan for 1873, page 523, in force hitherto:

"A copy of said contract or consolidation agreement filed, in pursuance of this act or of an act entitled "An act to provide for the incorporation of railroad companies," approved February twelve, eighteen hundred and fifty-five, and the acts amendatory thereof, and the acts amending or revising the same, with the Secretary of State, and certifiep by him to be a copy, shall in all courts and places be presumdtive evidenee of the consolidation of said two or more companies, and of all the facts therein stated."

EDWARD BACON,
Of Counsel for Plaintiff in Error.

16-663

OFFICE SUPREME COURT U.S.
FILED
JAN 9 1883

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN

THE TOWNSHIP OF CHICKAMING, - - *Plaintiff in Error,*

vs.

SAMUEL M. CARPENTER, - - - - *Defendant in Error.*

NUMBER 154, OCTOBER TERM, 1882.

REPLY BY PLAINTIFF IN ERROR TO BRIEF OF DEFENDANT IN ERROR.

I

The first point in the brief for defendant in error is, in effect, that it makes no difference who signed the bonds and coupons as Town Clerk, nor

when the signature was affixed; is, in effect, to strike out so much of the statute as required the signature of the Town Clerk, and to strike out so much of the decisions of this Court as renders unlawful the antedating of these bonds and coupons.

In Anthony v. County of Jasper, 101 U. S. p. 699, the language of this Court is: "Purchasers of municipal securities must always take the risk of the genuineness of the official signatures of those who execute the paper they buy. This includes not only the genuineness of the signature itself, but the official character of him that makes it. This plaintiff is charged with notice of the fact that Merwin was not the presiding justice of the county Court until October, 1872, and that he could not have signed the bond, in his official capacity until that time. Had he signed them in March, he could not have bound the township for their payment."

The brief for Samuel M. Carponter concedes that Alvin G. Barnett was Town Clerk, as alleged in the affidavit of Albert L. Drew (25 28) viz.: from the township election in April, 1869, until the end of the summer of the same year.

The bonds, being dated June 1st, 1869, must therefore, have been antedated, and any purchaser of the bonds was charged with notice of the fact that O. C. Gillette was not Town Clerk, or acting as such, prior to September 1st, 1869, and that he could not have signed the bonds, in his official capacity, prior to that time.

Samuel M. Carpenter is charged with notice that the bonds were antedated.

There is no evidence in the case that O. C. Gillette ever was town clerk, or, except in signing these bonds and coupons, ever pretended to act as Town Clerk.

If, as Samuel M. Carpenter insists, a delivery by Oliver L. Newkirk, the Supervisor, would make effectual the genuine signature of O. C. Gillette with the words "Town Clerk" after his name, then such delivery would render equally effectual such signature if forged by Oliver L. Newkirk, and the Supervisor would always have power, under the statute in question, to avoid the effect of any refusal by any Town Clerk to sign the bonds; it would make no difference that the Town Clerk for the best of reasons should refuse to sign the bonds; the Supervisor, by forging the clerk's signature, could make a delivery of the bonds sure to bind the township.

This Court has held directly to the contrary in Louisiana v. Wood, 102 U. S. pp. 297 and 298. Where bonds antedated had not only been delivered, but the municipality had received the proceeds of the sale thereof, and had paid interest on the antedated bonds.

The language of this Court in said case, p. 298, is, "That the bonds in question are invalid is conceded," such is the effect of Antony v. County of Jasper, 101 U. S. 693.

If the brief for defendant in error is correct as to the effect of the Governor's certificate and State Treasurer's registry to prove that O. C. Gillette was Town Clerk as the bonds purport, then such certificate and registry would be evidence to prove the legal execution of the bonds by both Supervisor and Clerk, though the signatures of both were forged, or though nei-

ther of the persons named had ever been a towuship officer.

The statute does not require the Governor or State Treasurer to decide as to the execution of the bonds.

The Governor was to decide on what the railroad company had done. The State Treasurer was to register the bonds and make an endorsement to show to whom they were delivered and the date of delivery.

The registry of the State Treasurer (43) showed that the deposit and the surrender of the bonds February 18th, 1870, was one transaction at one time.

The State officers and the township authorities were deprived of the opportunities for any investigation contemplated by the statute; the State Treasurer's office is more than one hundred miles from the township of Chickaming.

The statute under which the bonds were voted authorized no ante-dating by any officer of the State or township.

No certificate or statement by any officer mentions or relates any antedating; it is absurd to argue that any certificate of any officer named in the record tends to justify or legalize any antedating; the State officers may have been imposed upon as they would have been in the case of an ordinary forgery.

This Court in Antony v. County of Jasper, 101 U. S. 699, decides "antedating under such circumstances partakes of the character of a forgery and is always open to enquiry no matter who relies upon it."

The State officers had no authority to bind the township if it was not bound before their action.

Morrison v. Township of Bernards, 36 New Jersey Law Reports 223.
Wilson v. Salamanca, 99 U. S. 504.

According to the theory of the defendant in error, it would hardly be supposable that there ever could be any defense of want of authority in township officers. The mere delivery by the State officers would supply any want of authority.

If the mere deposit and delivery of these bonds as appears by the registry in the State Treasurer's office was evidence to prove the execution of these bbonds, much more so would be the delivery of the bonds to the plaintiff on purchase in the market, and as every holder of negotiable instruments is presumed to have had the same duly delivered to him, there would have been no need of any statute to relieve such holder from the necessity of proving the execution of any such instruments. Mere possession is evidence of delivery, and if delivery is evidence of execution, then in all cases the possession of negotiable instruments by a plaintiff would be evidence of the due execution thereof.

The paper itself appearing in Court would always prove its own execution without the aid of any statute. It has, however, been usual for plaintiffs unaided by a statute to begin by proving the execution of a negotiable instrument, for no evidence of delivery by a holder could be of any avail unless the instrument was proved to have been duly executed.

In the present case no evidence of registry by the State Treasurer and no evidence of the Governor's certificate was of any avail to the plaintiff until he had shown the due execution of the bonds.

The power and authority of the Governor and State Treasurer to deliver these bonds depended on the due execution of the bonds, and cannot be presumed from their delivery.

The machinery to bind and tax the township to pay these bonds depended on the due execution of the bonds for its legality, and to insist that the existence of parts of the machinery proved the execution of the bonds, would be equivalent to insisting that the existence of an ordinary tax deed by the Auditor General of a State would be prima facie evidence of all prior proceedings to sustain the deed just as well in cases where there is no statute making such deed prima facie evidence of such proceedings as where there is such a statute.

The bonds were offered in evidence and had gone to the jury before any copies from the State records were given in evidence

II

To the second point in the brief for defendant in error, the plaintiff in error replies that the affidavit of Albert L. Drew, subjoined to the plea is by no means limited to information and belief, and that if the defendant in error is correct as to what the affidavit must be to enable the township to dispute that it is bound by the bonds, it would generally be impossible to save any township sued on illegal bonds from admitting their legality unless it could obtain the affidavits of the very same officers who committed the wrong.

The plea is not the common law plea of the general issue to which the rule of the Federal Court relates. The plea is the statutory general issue with notice and affidavit under the statutes of Michigan.

The State decisions under these statutes are decisive.

The official capacity of the town clerk was certainly at issue.

Kenyon Insurance Co. v. McClellan, 43 Mich. 565.
County of Rolls v. Douglas 105 U. S. 732.

III.

As to the third point in the brief of the defendant in error, the plaintiff in error replies that the defense concerning the alleged consolidation is misunderstood by the counsel for the defendant in error.

In the first place his bill of particulars ought to have specified not only something to justify, if possible, the ante-dating of the bonds, but also ought to have stated the consolidation, if any there was. If the declaration and the endorsements on the bonds used terms which properly applied to the original Chicago & Michigan Lake Shore Railroad Company, and could only by some secret interpretation apply to the second company of the same name, then the bill of particulars should have removed all doubt and should have stated which company was meant.

Keley v. Waters, 31 Mich. 405.
Snell v. Gregory, 37 Mich. 501.

After the bonds were signed by the supervisor and dated June 1st, 1879, the proceedings as to consolidation took place in July, 1859, while the bonds were unsigned by any town clerk, and before they were deposited with the State treasurer. The town clerk, like a tribune of the people, had interposed his veto. The company named in the vote for donation had never earned the bonds and certainly had no contract or legal right to the unsigned bonds not yet deposited with the State treasurer.

No merely de facto consolidation could bring the corporation which received the bonds within any statute which could entitle it to them.

No railroad construction by another corporation could entitle it to the bonds. The offer of donation was revocable. The tax payers of Chickaming Township could be held only pursuant to their vote and the terms of the statutes.

Wadsworth v. Supervisors, 102 U. S., pp. 539-540.

There was such material change of circumstances while Alvin G. Barrett was town clerk, as to leave any other town clerk without authority to legally execute the bonds, such change of circumstances as to leave the State officers without legal authority to certify and deliver the bonds, especially to a corporation which could claim only through a de facto consolidation, and without legal right.

County of Scotland v. Thomas, 94 U. S. 692.

There was no estoppel even as against a stockholder to dispute corporate proceedings illegal as this consolidation undoubtedly was.

Scoville v. Thayer, 105 U. S. 143.

The illegal consolidation, the ante-dating of the bonds, the deposit and delivery of the bonds at the State treasurer's office so long after their date,

were sufficient to require the plaintiff in the court below to aver and prove himself a bona fide purchaser.

Commissioners, etc. v. Clarke, 94 U. S. 285.
Collins v. Gilbert, 94 U. S. 761.
Draper v. Springport, 104 U. S. 504.
Empire v. Darlington, 101 U. S. 92.
R. R. Co. v. Maine, 96 U. S. 510.

EDWARD BACON,
~~Attorney~~ Counsel for Plaintiff in Error.

16-163

OFFICE SUPREME COURT U. S.
FILED
DEC 19 1882
JAMES H. McKENNEY, Clerk.

SUPREME COURT

OF THE

United States.

THE TOWNSHIP OF CHICKAMING,
Plaintiff in Error,

vs.

SAMUEL M. CARPENTER.

OCTOBER TERM A. D. 1882, No. 154.

Brief for Defendant in Error.

MITCHELL J. SMILEY,
Counsel for Defendant in Error.

SUPREME COURT

OF THE

UNITED STATES.

THE TOWNSHIP OF CHICKAMING,
Plaintiff in Error,

VS.

SAMUEL M. CARPENTER.

STATEMENT OF THE CASE.

The Plaintiff in the Court below brought an action to recover upon certain bonds and coupons alleged to have been issued by the Township of Chickaming, in aid of the construction of the Chicago & Michigan Lake Shore Railroad Company, under an Act of the Legislature of the State of Michigan, approved March 22d, 1869.

The declaration alleged that the bonds were issued and dated June 1st, 1869, in pursuance of a vote of the township, authorizing the same.

That the bonds were delivered to the State Treasurer of Michigan by the township, and that the State Treasurer afterwards delivered the same to the Railroad Company.

That the plaintiff obtained the bonds from the Railroad Company and became the lawful bearer and owner thereof, entitled to receive payment upon the same.

The defendant appeared, and plead the general issue, and gave notice of special defences under the Michigan practice authorizing the same.

The bonds were signed by Oliver L. Newkirk, as Supervisor, and by O. C. Gillette, as Township Clerk.

The defendant gave notice that it would show that O. C. Gillette was not an officer of said township; that the bonds did not legally come into the possession of the State Treasurer.

Also, that the State Treasurer never delivered the said bonds prior to February, 18th, 1870.

That the vote authorizing the issue of the bonds was for aid by donation only, and was had in May, 1869.

That the Chicago & Michigan Lake Shore Railroad Company, in whose aid they were voted, consolidated with another Railroad Company, before the bonds were issued, and that the bonds were issued to the consolidated Company, and not to the Company for which they were originally voted.

These are the principle defences set up in the defendant's notice.

The notice will be found on pages 10 and 11 of the printed record.

Rule twenty-five of the Federal Court Rules of the Western District of Michigan, provides as follows:

"Upon the plea of the general issue in an action upon any written instrument, under seal or without seal, the

plaintiff shall not be put to the proof of the execution of the instrument, or the hand-writing of the defendant, unless the plea is verified by affidavit."

In view of this rule, the township defendant caused to be filed the affidavit of Albert L. Drew, the Supervisor of the township, which will be found on pages 12 and 13 of the printed record.

Upon the trial of the case, the plaintiff offered in evidence the bonds and coupons declared upon, a copy of which had been furnished the defendant in a bill of particulars, constituting a part of the pleadings.

(See the record folios 22 to 24 inclusive.)

The counsel for the defendant ojected to the reading in evidence of the bonds, because the plaintiff had not proven the genuineness of the signature, or the official character, of O. C. Gillette, as Township Clerk.

After referring to the affidavit on file and annexed to the defendant's plea, the defendant's counsel, said:

"I admit that O. C. Gillette signed the bonds and coupons, but I deny that he ever was town clerk, or acting town clerk, or had any authority to sign them, or any of them. I admit that Oliver L. Newkirk was Supervisor of the township of Chickaming, and signed the bonds and coupons on or about the day of their date."

The defendant's objection was, thereupon, overruled, and the bonds and coupons were admitted and read in evidence.

The law under which the bonds and coupons were issued provides that if they are issued by a township they shall be executed by the Supervisor and Clerk thereof, and when

issued the same shall be delivered by the persons or officers having charge of the same to the Treasurer of the State, who shall give a receipt therefore, and hold the same as Trustee for the municipality and the Railroad Company. That he shall keep a record of the same, and deliver the same to the Railroad Company upon the certificate of the Governor of the State that the Railroad Company has complied with the provisions of the law, and is entitled to receive such bonds. That the Treasurer shall endorse thereon the date of delivery, to whom the same were delivered, and the bonds shall draw interest only from the time when so delivered.

That the Treasurer shall notify the Clerk of the township issuing the same of the date of the delivery of its bonds to such Railroad Company. The sections of the Statutes relating to this subject are printed at the close of this brief.

To show that the requirements of the law had been complied with, and that the bonds had been issued in pursuance of the law, the plaintiff next offered and read in evidence a copy of the records from the State Treasurer's office, showing that the bonds were received by the State Treasurer February 18th, 1870, and delivered to the President of the Railroad Company the same day. This copy of the Record from the State Treasurer's office appears on page 20 of the printed Record.

It describes the bonds, states that they were executed by Oliver L. Newkirk, Supervisor, and O. C. Gillettes, Township Clerk, for the township of Chickaming, in pursuance of the law referred to; that they were surrendered to A. H. Morrison, President of the Railroad Company, upon the Governor's certificate.

The plaintiff next offered in evidence the Governor's certificate, made in pursuance of the law, showing that the railroad company had complied with the law, and with the conditions on which the township, on May 24, 1869, voted to issue these bonds, and that the company was entitled to the eleven thousand and five hundred dollars in bonds of the said township of Chickaming, voted issued, and deposited with the Treasurer of this State, for the purposes of said company in the construction of its road.

This certificate was duly filed in the State Treasurer's office.

(See Record, page 21.)

The bonds recite that they are executed and issued in conformity to said Act of the Legislature, and bear the certificate of the State Treasurer; that they were delivered by him to the Chicago & Michigan Lake Shore Railroad Company, under the provisions of said Act.

(See folio 52 of the Record.)

After making this proof, the plaintiff rested his case, and the defendant then offered to prove that the company for which the bonds were voted, consolidated with another railroad company under the laws of the State of Michigan authorizing the consolidation of different railroads, after the township had voted to issue the bonds in question.

(See page 24, folio 54 of Record, and page 43, folio 105.)

The plaintiff's counsel objected to the introduction of the articles of consolidation, upon the ground that they were irrelevant, incompetent and immaterial to the issue.

This objection was sustained, and the defendant excepted.

It was then conceded and admitted by both parties, as a fact, before the jury, that the vote of the township of Chickaming referred to in the Governor's certificate and in the bonds, was a vote of aid, by donation, under section one of the General Enabling Act, which was printed on the back of each of said bonds.

And thereupon, both parties rested the case.

(See folios 105, 106 of the printed Record, page 43.)

The defendant made various requests to charge, asking the Court, in substance, to charge the jury that the plaintiff was not entitled to recover.

These requests were refused—to which the defendant excepted.

And thereupon, the Court charged the jury that the plaintiff was entitled to recover the amount of the bonds and coupons, viz.: $6,271.75.

To this the defendant also excepted.

(See pages 44 and 45 of Record.)

FIRST POINT.

The plaintiff made sufficient proof of the execution and delivery of the bonds by the township of Chickaming to enable him to recover upon the bonds and coupons.

The bonds purported to be executed, on the part of the township, by Newkirk, as Supervisor, and by Gillette, as Township Clerk, and it was conceded upon the trial that Newkirk was the Supervisor, and also that Gillette's signature was genuine, although it was denied that he was Township Clerk.

The bonds were authorized by a vote of the township, executed by the Supervisor of the township, and by Gillette, acting as Township Clerk, and by the township delivered to the State Treasurer, under the law.

(See Sections 4, 5 and 6 of the Act under which the bonds were issued.)

The Supervisor of the township, as well as the Clerk, endorsed his certificate upon the bonds. That the bonds were issued under the Act, and that the Act had been, in all respects, complied with by the people and the authorities of the township.

The State Treasurer's record shows that the bonds were delivered to him by the officers of the township, in pursuance of the Act.

The certificate of the Governor showed that the bonds had been voted, issued, and deposited with the State Treasurer by the township of Chickaming, and the State Treasurer certified upon the back of each bond that it had been delivered by him to the Railroad Company, under the provisions of the Act in question.

This evidence was sufficient to show that the official character of Gillette, the genuineness of whose signature was admitted, was recognized by the township and its officers, as well as by the State authorities, and proved that he was the acting clerk of the township; and this was sufficient proof of the execution of the bonds, at least, until proof should be offered by the defendant to show that he was not the township Clerk, in fact.

But we submit that the township, under all the circumstances, was estopped from denying the official character of

Gillette, after depositing the bonds with the State Treasurer as genuine, and giving currency to its paper with his name attached to it as Township Clerk.

This action was equivalent to an assertion on the part of the town that his signature was genuine and that he was, in fact, the officer which he purported to be.

See Town of Weyauwega v. Ayling, 99 U. S. 112.
2 Daniels on Neg. Instruments, Sec. 1351.
Cascoe Bank v. Keene, 53 Me. 104.
Greenfield Bank vs. Krafts, 4 Allan 447.

The action of the township officers in signing the bonds was purely ministerial and in pursuance of the vote of the township.

SECOND POINT.

The execution of the instrument was admitted by the pleadings.

The affidavit filed by the township was insufficient to put the plaintiff to proof of the execution of the bonds, under rule twenty-five, which has been referred to heretofore.

This affidavit was made upon the information and belief of affiant.

It did not, in terms, deny the execution of the bonds declared upon.

Certain facts and circumstances were set forth in the affidavit, from which the affiant *concluded* that the bonds were never *legally* delivered, and therefore, never *legally* executed.

This was stated to be according to his best information and belief.

The facts stated in the affidavit, however, upon information and belief, were not sufficient to warrant the conclusion at which the affiant arrived.

He stated in his affidavit, that in April, 1869, Oliver L. Newkirk was elected Supervisor of said township, and Alvin G. Barnett was elected Township Clerk of said township; both of which officers, duly qualified, entered upon the duties of their respective offices aforesaid, and continued to discharge such duties throughout the month of *May and the Summer of* 1869.

That said Newkirk signed said bonds and coupons at about the time they bare date.

That Barnett, being Township Clerk, as aforesaid, signed none of them, and refused to sign any of them.

It is also stated in the affidavit that all of said bonds and coupons were held in possession of said Newkirk, as Supervisor of said township, for about *eight months after June 1st,* 1869, which would be about the 1st of February, 1870, the month in which the bonds were actually issued and delivered to the State Treasurer as appears from his records, and several months after Mr. Barnett, the alleged Town Clerk, ceased to act as Township Clerk, as appears from the affidavit.

And the affidavit by inference, at least, shows that Barnett was not the Township Clerk at the time the bonds were issued in fact, viz., in February, 1870, and it does not show, either by fact or by inference, that Gillette was not the Township Clerk at the time the bonds were issued.

It is further stated in the affidavit, near its close, "that deponent further says that by reason of the premises, and according to his best knowledge and belief, none of said bonds or coupons were ever legally executed by any Township Clerk."

This statement is defective, in that it refers to the premises before stated, from which the affiant concludes that the bonds were never legally executed.

The facts recited, however, do not warrant the affiant's legal conclusion.

It has generally been held, where an affidavit was required in support of the truth of a plea, that the facts must be stated positively, and not upon information and belief.

1 Chitty, Pleadings 463.
Brown vs. Cowee, 2 Doug., Mich. 432
Tidds Pr., 182.
Winsor vs. Bank, 81 Pa. St. 304.
Steuben County Bank vs. Alberger, 78 N. Y. 252.

If the defendant had proven upon the trial the facts precisely as they are stated in the affidavit of Drew, the Supervisor, such facts would not have made a defense. Instead of denying positively that the bonds were ever executed by the township, the defendant stated certain facts upon information and belief. The facts set forth fail to show that the bonds were not executed.

Who held the office of Township Clerk between the time when the affidavit inferentially states that Barnett ceased to perform the duties of the office, namely, the summer of 1869, and February, 1870, the time when the bonds were

actually issued and placed in the hands of the State Treasurer, is matter of record in the township, and if the record did not show that Gillette was the Township Clerk during that time, the Supervisor who made the affidavit could easily have sworn to the fact which the record disclosed; but he did not do so.

The affidavit was carefully worded and evidently with a view to conceal the facts in regard to who held the office during this period.

The facts stated in the affidavit are not at all inconsistent with a proper and legal execution of the bonds.

If we are correct in either of these propositions, viz., that upon the trial the execution of the bonds was sufficiently proved to entitle their admission in evidence, or that by the state of the pleadings the execution of the instrument declared upon was admitted, then the plaintiff would be entitled to recover, unless the matters offered in evidence by the defense were sufficient to defeat a recovery.

THIRD POINT.

The only matter offered in evidence by the defense was the fact that after the bonds had been voted to the railroad company by the township, said railroad company consolidated with another under the laws of Michigan.

This alleged defense was entirely irrelevant and immaterial.

It has so been held by this Court in several cases.

(See New Buffalo vs. Cambria Iron Company, decided at the October term of this Court, 1881.

That case arose under this same statute, and upon a donation made to the same railroad company, and upon the same consolidation.

The facts were substantially the same.

The consolidation took place after the bonds had been voted by the township of New Buffalo, and before they had been delivered to the railroad company.

The vote was for a donation, and not for a subscription, but this Court held that the same rule applied, and that the bonds were valid obligations in the hands of the railroad company, and could be enforced by a person to whom the railroad company had transferred them, for a valuable consideration, after due.

For these reasons the defendant in error submits that there was no error committed by the Court below, and that the plaintiff was entitled to the judgment which he recovered.

MITCHELL J. SMILEY,

Counsel for Defendant in Error.

[No. 45.]

AN ACT to enable any township, city or village to pledge its aid, by loan or donation, to any railroad company now chartered or organized, or that may hereafter be organized, under and by virtue of the laws of the State of Michigan, in the construction of its road.

SECTION 1. *The People of the State of Michigan enact,* That it shall be lawful for any township or city to pledge its aid to any railroad company now chartered, organized, or that may hereafter be organized, under and by virtue of the

laws of the State of Michigan, in the construction of its road, by loan or donation, with or without conditions, for such sum or sums, not exceeding ten per centum of the assessed valuation then last made, of the real and personal property in such township or city, as a majority of the electors of such township or city voting, shall, at a meeting or meetings called for that purpose, determine: *Provided*, That the total amount of outstanding indebtedness, exclusive of interest thereon, of any such township or city, incurred for any and all railroads, shall not exceed ten per cent. of the assessed valuation of the same at any one time: *Provided*, That the amount, exclusive of interest thereon, which shall become due or collectable in any one year, shall not exceed two per centum of the assessed valuation of such township or city, at the time of issuing the same: *And provided further*, That the total amount which the city of Detroit may raise for such purposes shall not exceed five per centum of the assessed valuation of the real and personal property of said city.

Sec. 2. It shall be the duty of the Supervisor of any township, and the mayor of any city, to call a meeting or meetings of the electors of their respective township or city whenever a request in writing to do so shall be made by thirty tax-paying electors of such township or city, and to give public notice thereof, at least twenty days previous to holding such meeting, by posting the same in not less than five of the most public places in such township or city, and by the advertisement of the same in some newspaper published in the county wherein such township or city shall be: *Provided*, In the case of cities or townships in which a daily or weekly newspaper shall be published, such publication shall be made in such newspaper, at least once in each week

for three successive weeks next previous to the holding of such meeting: *And provided,* In the case of the city of Detroit, such notice shall be published in at least three daily newspapers for ten consecutive days previous to the holding of such meeting. Such request and notice shall specify the amount of aid, the conditions, rate of interest, the time of payment and manner of executing the bonds, and other particulars in regard to such aid not otherwise provided herein: *And provided further,* That no township or city shall, under the provisions of this act, hold more than two meetings in any one year, unless a majority of the tax-paying electors of such city or township shall sign such request in writing therefor.

Sec. 3. At such meeting or meetings the township, city or ward inspectors of elections shall act as inspectors of election. The electors shall vote by ballot, (such ballot to contain the words "aid to railroad—yes," or "aid to railroad—no," as the case may be) and shall be subject to challenge as at other township or city elections; and the proceedings at such meetings to be held under the provisions of this act, shall, in case of townships, be governed, so far as they may be applicable, by the general laws of this State relating to township elections, and in the case of cities, by the laws regulating their respective municipal elections; and illegal and fraudulent voting shall be punishable in the same manner and to the same extent as at other township or city elections. A copy of the request, and also of the notice required by the provisions of section two of this act, shall be entered at large upon the records of the township or city, together with a statement of the result, and other essential particulars; and a certified copy of such record shall be in all courts and places, *prima facie* evidence of the facts therein set forth.

Sec. 4. Any township or city that may avail itself of the benefits of this act by voting aid to any railroad company, as provided herein, shall, within sixty days after the question of aid is determined by a vote of the electors of such township or city, as provided in section three of this act, issue its coupon bonds for the amount so determined to be granted, which bonds shall be in sums of not less than one hundred dollars each, and not more than one thousand dollars each, and shall be payable at any time as determined upon by the electors of such township or city, not exceeding twenty years from the date thereof. Such bonds shall bear interest at a rate of not exceeding ten per cent. per annum, and shall have attached thereto the necessary and usual interest coupons, corresponding in dates and numbers with the bonds to which they are attached, which shall be signed by written signatures by the same person or persons executing such bonds. Such bonds shall, if issued by a city, be executed by the mayor and clerk or recorder thereof, as the case may be, under the seal of said city, and if issued by a township, they shall be executed by the supervisor and clerk thereof, and if any city or township issuing such bonds shall have a seal, the same shall be impressed upon each of such bonds. The bonds, and coupons attached thereto, shall be payable at the office of the treasurer of the county in which such township or city may be situate.

Sec. 5. Whenever any such bonds as provided by the provisions of this act shall have been issued as therein specified, the same shall be delivered by the person, persons or officers having charge of the same, to the Treasurer of this State, who shall give a receipt therefor, and hold the same as trustee for the municipality issuing the same, and for the railroad company for which they were issued, and to be

disposed of by said Treasurer in discharge of his trust as hereinafter provided.

Sec. 6. Upon receipt of any such bonds from any township or city, in aid of any such railroad company, the Treasurer of this State shall immediately register or record the same in a book or books to be kept by him for that purpose, in his office, which record shall show the amount, date and number of each bond, the rate of interest which it bears, by what township or city issued, to the benefit of what railroad company the same are issued, and the time when payable, which record shall be always open for the inspection of any citizen of this State, or other interested persons. Such bonds shall be safely kept by said Treasurer, for the benefit of the parties interested, and be disposed of by him in the following manner: That is to say, whenever any railroad company, in aid of which any of such bonds may have been issued, shall present to said Treasurer a certificate from the Governor of this State that such railroad company has in all respects complied with the provisions of this act, and is thereby entitled to any of such bonds, the same, or such of said bonds as said company shall be entitled to receive, shall be delivered to said company, the Treasurer first cutting therefrom, canceling and returning to the municipality, the past due coupons. The Treasurer shall indorse upon each of said bonds the date of such delivery and to whom the same were delivered, and the same shall draw interest only from the time when so delivered; and the Treasurer shall notify the clerk of the township, or recorder or clerk of the city issuing the same, of the date of the delivery of its bonds to such railroad company. The railroad company so receiving such bonds shall pay the State Treasurer one-tenth of one per centum of the par value of all such bonds so de-

livered, which shall be received by him in full payment of all fees and charges for the custody, recording, endorsing and delivery of said bonds, which money shall be paid into the State Treasury. And in case any bond so delivered to said Treasurer by any such township or city shall not, within three years from the time when the same were received by him, be demanded, in compliance with the terms of this act, the same shall be canceled by said Treasurer, and returned to the proper officers of the township or city issuing the same.